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Report of the Working Group on Arbitrary Detention on its mission to Argentina

Note by the Secretariat

At the invitation of the Government, the Working Group on Arbitrary Detention visited Argentina from 8 to 18 May 2017.

The Secretariat has the honour to transmit to the Human Rights Council the report on that visit, which contains the findings, conclusions and recommendations of the Working Group relating to the relevant institutional and legal frameworks and deprivation of liberty in the context of the criminal justice system, psychosocial disabilities and migration.

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Report of the Working Group on Arbitrary Detention on its visit to Argentina from 8 to 18 May 2017*

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* Circulated in the language of submission and in Spanish only.

I. Introduction

1. At the invitation of the Government, the Working Group on Arbitrary Detention visited Argentina from 8 to 18 May 2017. The Working Group was represented by Sètondji Roland Adjovi (Benin) and Elina Steinerte (Latvia, Vice-Chair) and accompanied by staff from the Office of the United Nations High Commissioner for Human Rights. At the outset of this report, the Working Group wishes to thank the United Nations Resident Coordinator and the country team in Argentina for their support and cooperation.

2. The Working Group extends its gratitude and appreciation to the Government of Argentina for inviting it to undertake this country visit and for its cooperation before, during and after the visit. The Working Group intends to continue the constructive dialogue with the Government on the issues set out in the present report.

3. The Working Group also recognizes the contribution of numerous stakeholders from civil society who shared their perspectives on the arbitrary deprivation of liberty in Argentina, particularly representatives from non-governmental organizations, indigenous communities, human rights defenders, lawyers, academics and parliamentarians, as well as individuals who had been or are currently deprived of their liberty and their relatives.

4. During its 10-day visit, the Working Group visited the City of Buenos Aires and the provinces of Buenos Aires, Chubut and Jujuy. The delegation met with officials from the Ministry of Foreign Affairs, the Ministry of Justice and Human Rights, including the Secretariat for Human Rights and Cultural Pluralism, the Ministry of Security, the National Migration Agency, the National Public Prosecutor's Office, the National Public Defender's Office, the Office of the National Ombudsperson, the National Penitentiary Attorney[1] and members of the legislature, as well as with various authorities in the City of Buenos Aires and the provinces of Buenos Aires, Chubut and Jujuy.

5. The Working Group visited 20 places of deprivation of liberty at both the federal and provincial levels, including penitentiary facilities, police stations, juvenile centres and mental health institutions (see annex I). It interviewed over 150 persons deprived of their liberty. Late during the mission, the Working Group was informed of alleged critical situations in the care of elderly persons but was not able to visit any relevant centres. The Working Group invites stakeholders to submit to it information relevant to the alleged arbitrary deprivation of liberty of elderly persons.

6. The Working Group received the cooperation of the authorities, including unimpeded access to the facilities and the ability to interview confidentially persons deprived of their liberty. It shared its preliminary findings with the Government on 18 May 2017.

7. The Working Group acknowledges the positive measures and good practices designed and introduced by the Government of Argentina in response to its preliminary findings and will reflect upon these in appropriate sections of the present report.

II. Overview of the institutional and legal framework

A. Constitutional and institutional frameworks

8. Argentina has a division of competencies between the federal Government, 23 provinces and the autonomous City of Buenos Aires, each with its own constitution and laws and executive, legislative and judicial authorities.

9. Article 75 of the Constitution of Argentina gives international human rights treaties precedence over national and provincial laws, providing for their direct application by the authorities and by domestic courts. It is thus the responsibility of the federal Government to

[1] Also referred to as the Federal Penitentiary Ombudsperson.

ensure that its international legal obligations are complied with at all levels within the territory of Argentina. The federal nature of the country should not become an obstacle to the effective enforcement of the international obligations undertaken by the country.

10. The judicial system is organized on the basis of federal and provincial courts, with federal courts having jurisdiction over federal offences. Judgments are made public. The accused is entitled to either a private defence counsel, or one appointed by the court, and has the right to submit exculpatory evidence and call witnesses for the defence. Criminal procedure is governed by provincial law and not federal legislation; as a result, it varies from one province to another.

11. Responsibility for enforcing the law and maintaining public security lies with various institutions. The federal police, the Gendarmería Nacional, and the coastguard service report to the Ministry of Justice, Security and Human Rights. Provincial police forces are administered by provincial executive bodies.

12. During its visit, the Working Group learned that no federal Ombudsperson[2] has been appointed since 2009. In 2010, the Deputy Ombudsperson took charge until 2013, when his mandate expired. Since then, the Under-Secretary-General of the Office of the Ombudsperson has been in charge for the interim, but without a mandate to exercise the full range of the functions of the Ombudsperson in terms of the promotion and protection of human rights. Federal law requires the appointment of the Ombudsperson to be made through a bicameral commission of the National Congress, which has yet to select a candidate.

13. Despite the fact that three shortlisted candidates for the post presented their proposals in November 2017, the appointment of the Ombudsperson is still pending. The Working Group notes that this situation has an adverse impact on the overall situation of human rights in Argentina. The Working Group strongly urges the Argentine authorities to appoint the Ombudsperson as a matter of priority.

14. During the meeting with the Federal Penitentiary Attorney, the Working Group, on the one hand, learned that the Office of the Penitentiary Attorney had faced a number of instances where it had been denied access to places of deprivation of liberty and in some instances, had had to resort to litigation to ensure unimpeded access. On the other hand, the Working Group was informed that no registered complaints concerning limitation of access to places of deprivation of liberty had been made by the Office of the Penitentiary Attorney to the Secretariat for Human Rights.

15. Such incidents, even if they are not of widespread character, have an adverse impact upon the ability of the Office of the Penitentiary Attorney to discharge its mandate effectively. The Working Group encourages the Office of the Penitentiary Attorney to register all instances of impeded access with the relevant institutions.

16. The Working Group commends the adoption on 7 January 2013 of Law 26827 on the national prevention mechanism system, following the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It also welcomes the appointment of members of the national preventive mechanism in December 2017, in accordance with articles 3 and 17 of the Optional Protocol.

17. While the Working Group understands that the City of Buenos Aires and the provinces of Chaco, Mendoza, Misiones, Rio Negro, Salta, Tucuman and Corrientes have designated their respective prevention mechanisms, other provinces have not done so, or are in the process of constituting them. The Working Group recalls that regular independent oversight over all places of deprivation of liberty plays a significant role in reducing instances of arbitrary detention. The Argentine authorities should increase their efforts to ensure functioning national prevention mechanisms in accordance with the provisions of the Optional Protocol at local (provincial) level.

[2] In Spanish, Defensor del Pueblo de la Nación.

18. The national preventive mechanism system must be comprised of entities at all levels that are fully independent of the executive, properly funded and able to discharge their mandate effectively by having unfettered access to a wide range of places of deprivation of liberty. The requisite authorities should enter into a constructive dialogue with the designated national preventive mechanisms about the implementation of the present recommendations. However, the effective operation of national preventive mechanisms must not be construed as preventing other independent bodies, including civil society, from carrying out monitoring visits to a wide range of places of deprivation of liberty.

B. International human rights obligations

19. Argentina is party to multiple international human rights instruments, namely the International Covenant on Civil and Political Rights (and its two Optional Protocols), the Convention Relating to the Status of Refugees (and its Optional Protocol), the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (and its Optional Protocol), the International Convention for the Protection of All Persons from Enforced Disappearance, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child (and its two Optional Protocols), the Convention on the Rights of Persons with Disabilities and the International Covenant on Economic, Social and Cultural Rights.

20. The State is not a party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity or the Convention relating to the Status of Stateless Persons. Furthermore, ratification by Argentina of the International Covenant on Civil and Political Rights was subject to the understanding that no inhabitant of the nation might be punished without a previous trial based on a law enacted before the act that gave rise to the process.[3]

21. Argentina is a member of the Organization of American States. In 1984, it ratified the American Convention on Human Rights and has accepted the jurisdiction of the Inter-American Court on Human Rights. In February 2017, however, the National Supreme Court of Justice of Argentina issued a ruling stating that the decisions of the Inter-American Court could not produce automatic annulation of national sentences issued by the Supreme Court.[4] The Working Group is concerned that such an interpretation negatively affects the fulfilment of the country's international obligations.

22. During the visit, the authorities expressed to the Working Group their commitment to consider aligning legislation with international human rights standards.

III. Positive measures

23. The Working Group acknowledges and commends the four-year plan for the improvement of the justice system, "Justice 2020", launched by the Ministry of Justice and Human Rights in May 2016. The Programme features an important human rights component and is defined as a space for institutional and citizen dialogue with the objective of elaborating, implementing and evaluating policies to build, together with society, a justice system that generates socially relevant results and allows the fast resolution of conflicts. Justice 2020 aims to serve as a tool for achieving Sustainable Development Goal *16 of the 2030 Agenda for Sustainable Development* through building strong and reliable

[3] Article 18 of the Constitution.

[4] Response to the case of *Fontevecchia and D'Amico v. Argentina*, 29 November 2011 (No. 238), available from www.saij.gob.ar/corte-suprema-justicia-nacion-federal-ciudad-autonoma-buenos-aires-ministerio-relaciones-exteriores-culto-informe-sentencia-dictada-caso-fontevecchia-damico-vs-argentina-corte-interamericana-derechos-humanos-fa17000003-2017-02-14/123456789-300-0007-1ots-eupmocsollaf.

institutions that guarantee peace and access to justice for all. The programme has seven thematic axes or areas of work: institutions, criminal justice, civil justice, access to justice, human rights, public management and justice and community.

24. Justice 2020 has already produced outcomes, such as the adoption of a law unifying the instruction and criminal procedures, and a law for the strengthening of the federal criminal courts and "unipersonal" trials (trials presided over by a single judge without a jury). Further legal reforms are under way on the Code of Criminal Procedure, Civil Procedure and Commerce and on the law on international commercial arbitration.

IV. Main findings

25. In determining whether the information provided, including from persons interviewed during the visit, raised issues regarding the arbitrary deprivation of liberty, the Working Group considered the five categories of arbitrary deprivation of liberty outlined in its methods of work (see A/HRC/36/38, para. 8).

A. Deprivation of liberty in the context of the criminal justice system

1. Wide powers of the police to arrest

26. The Working Group learned of the wide powers of the police to deprive persons of liberty based on either the suspicion of the commission of a crime or for verification of identification. While the applicable legislation requires that the police do a rigorous assessment when deciding upon the need to arrest someone on the suspicion of the commission of a crime and strictly limits the duration of detention,[5] that is often not implemented in practice. The possibility of arresting someone on the basis of a suspicion of a crime being carried out is widely used in a discriminatory and subjective manner, namely towards those in situations of vulnerability, such as street children, members and leaders of indigenous communities, migrants, lesbian, gay, bisexual, transgender and intersex persons and others.

27. The Working Group observed the same in relation to the inherent powers of the police to "withhold" persons in order to carry out identity checks. The Working Group, however, notes that the existing legislation does not oblige every person to carry an identification document, which is at odds with the inherent powers of the police to request anyone to prove their identity.

28. In relation to the implementation of this police power, the Working Group was informed that the process of verifying identity would normally be very short, but could take up to 12 hours. However, the Working Group observed that while such instances of detention in practice can be as short as a few minutes, they can also be as long as overnight and even last over a whole weekend. Furthermore, such detention does not appear to be considered by the authorities as deprivation of liberty but rather only as "withholding of a person", which is among the necessary police powers, including for "population control". The Working Group recalls that the question of whether a particular situation constitutes deprivation of liberty is first and foremost a question of fact: if a person is unable to leave a place at will, the situation constitutes deprivation of liberty and all the safeguards that are applicable to guard against arbitrary detentions and possible ill-treatment must be enforced and compensation granted to those whose right to liberty has been violated.

29. While the Working Group welcomes the recent efforts of the authorities to introduce human rights training into the curriculum of police officers,[6] it shares the concern of the

[5] See, for example, Autonomous City of Buenos Aires, Law 5688 and Santa Cruz Province, Law 3523, both adopted at the end of 2016.

[6] The Working Group was informed that in 2017, 16 human rights training for police agents took place in the province of Buenos Aires.

Human Rights Committee about this police practice and the regulation under which it is permitted.[7]

2. The excessive use of pretrial detention

30. According to National Law No. 24.390, promulgated on 21 November 1994, pretrial detention must be an exceptional measure. The application of such an exceptional measure must be determined in each case, after the consideration of relevant factors, such as the risk of absconding and the risk of interference with the investigation, as well as the complexity of the case. Depending on these factors, the prosecutor may request and the judge may impose a reasonable duration of pretrial detention, which in principle must not exceed two years and, in cases of multiple charges or due to their complex nature, three years.

31. The Working Group found that this legal framework is not reflected in the practice of the judiciary, which tends to grant most of the requests for pretrial detention. As a result, pretrial detainees constitute about 60 per cent of those detained within the criminal justice system in Argentina. In some institutions visited by the Working Group, that figure was even higher. For instance, at the time of the visit and according to the data provided by the officials of the institution, 75 per cent of the detainees in the women's federal penitentiary complex No. IV in Ezeiza were in pretrial detention.

32. Furthermore, the Working Group observed that the two-year limit for pretrial detention, which is an exceptionally long period in itself, was often exceeded and it encountered persons who had spent four to six years in pretrial detention. The Working Group was informed of other cases where individuals had allegedly spent as long as 10 or even 15 years in pretrial detention.

33. Moreover, while the separation of pretrial detainees and convicted persons is envisaged in law, the Working Group observed that separation was not implemented in many of the facilities visited, owing to lack of space, and that pretrial detainees were subjected to the same regime as those convicted. The Working Group was alarmed to learn that pretrial detainees are routinely required to follow the same regime imposed on sentenced persons. Such a transformation of the nature of pretrial detention into a de facto punishment without any conviction is in violation of article 10 (2) (a) of the International Covenant on Civil and Political Rights.

34. The Working Group is concerned about lengthy pretrial detention and the large percentage of pretrial detainees in the prison population, and notes that there is an urgent need to revise this practice in Argentina at both the federal and provincial levels. In that context, the Working Group joins the Human Rights Committee calling for Argentina to review the regulations governing pretrial detention.[8]

35. The Working Group notes the positive inroads made in provinces, such as Chubut, to curtail the excessive use of pretrial detention. It encourages the respective authorities to continue with their efforts. The Working Group also acknowledges the guidelines and instructions introduced by the General Prosecutor of the province of Jujuy in May 2017 to provincial prosecutors regarding the exceptionality of pretrial detention and the use of alternatives to detention. Furthermore, it welcomes the information provided by Argentina regarding recent legislative efforts at the federal level aimed at reducing delays in the appellate courts and, as a consequence, the duration of pretrial detention.[9] However, it is important that those legal frameworks are complied with to make the change effective.

3. Availability and application of alternatives to detention

36. The Working Group notes as positive that the legislation in Argentina, at both the federal level and in 13 provinces, provides for alternatives to detention for both pretrial and

[7] See CCPR/C/ARG/CO/5, para 17.
[8] See CCPR/C/ARG/CO/5, paras 19–20.
[9] See Law 27.384 of 13 September 2017.

post-trial stages.[10] It also welcomes initiatives related to the implementation and federalization of measures on alternatives to detention, undertaken as part of the Justice 2020 programme. It encourages the efforts to review the system of pretrial detention in accordance with article 9 of the International Covenant on Civil and Political Rights.

37. While the instances of using alternatives to detention, such as electronic tagging, are slowly rising,[11] the high percentage of those in pretrial detention continues, which largely results from the very restrictive possibilities of using available alternatives to detention in practice. For example, the Working Group learned that in the province of Buenos Aires, the application of alternatives to detention since the amendments to law 11.922 on the Criminal Procedure Code were adopted is only possible in three instances: for persons over the age of 70; for pregnant and nursing mothers and women with childcare responsibilities; and for people with serious health conditions. These limited options for cases when alternatives to detention can be applied render the alternatives to detention ineffective in practice. Moreover, while the law does allow judges discretion to grant alternatives to detention in other exceptional cases, that discretion is very narrow and, in fact, extremely rarely used in practice.

38. During its visit to some police stations, the Working Group found that many female pretrial detainees had children staying with them, including some under the age of 5, but that this had no impact on their pretrial detention. Despite the information provided by the authorities that the cost of implementing the "Programme for assistance to persons under electronic surveillance" is fully covered by the national and provincial governments, as appropriate, some detainees told the Working Group that they could only benefit from electronic tagging if they were able to pay for the device themselves. The Working Group finds that such a practice renders the use of alternatives to detention ineffective and de facto discriminates against those who are not in a financial position to cover the costs of measures such as electronic tagging. The Working Group wishes to emphasize that the implementation of alternatives to detention is the responsibility of the government at both the federal and provincial levels and that this implementation must be effective. Alternatives to detention must be available in practice to everyone, irrespective of whether they are able to pay for them.

4. Deprivation of liberty at police stations

39. The Working Group is alarmed about the use of police stations to hold detainees for prolonged periods. This stems mainly from the excessive use of pretrial detention across the country and the lack of space in pretrial detention facilities. During its on-site visits, the Working Group was able to observe the widespread nature of this phenomenon, with a large majority of the detainees being held at police stations at the pretrial stage for prolonged periods of time. The periods of their detention ranged from three days to five months and were undertaken in substandard conditions, in facilities which are designed to hold people only for short periods. Furthermore, persons in police custody scarcely received any information regarding the reasons for their arrest and their rights and most detainees complained of difficulties in obtaining effective legal assistance. Police officers were overburdened with the task of looking after the detainees on a long-term basis without appropriate facilities and without having received adequate training in the custody and handling of persons deprived of liberty.

40. While its mandate does not focus on conditions of detention or the treatment of prisoners per se, the Working Group must consider to what extent detention conditions can negatively affect the ability of detainees to prepare their defence and their chances of a fair

[10] The Working Group was informed that 13 provinces have joined the programme of assistance to persons under electronic surveillance, including San Juan, Jujuy, Mendoza, Tucumán, Salta, Tierra del Fuego, Santa Fe, Misiones, La Rioja and the Autonomous City of Buenos Aires. See resolutions 1379/15 and 86/16 of the Ministry of Justice and Human Rights.

[11] The Working Group was informed that as of August 2017, electronic tracking devices were used in over 1,560 instances. However the Government informed the Working Group that the Ministry of Justice and Human Rights provided 2,330 electronic tracking devices for use in the provinces at the request of local courts.

trial. Holding pretrial detainees in facilities entirely unsuited for such a purpose, such as police stations that are not equipped with the infrastructure and services to ensure decent conditions of detention, poses severe impediments to the ability of the detainees to prepare for their defence. The Working Group urges the respective authorities to cease the holding of pretrial detainees in facilities not suited to such a purpose.

41. In the province of Chubut, the Working Group observed that some of those already sentenced were being held in police stations owing to the lack of space in penitentiary institutions. The Working Group urges the authorities of Chubut to step up their efforts to establish the provincial penitentiary system, including appropriate facilities with dedicated services for the detainees and professional penitentiary personnel, and to cease holding convicted persons at police stations for the purposes of serving their sentences. The police stations are not equipped for this purpose and police personnel are neither suited nor trained to exercise the functions of prison guards.

42. In that context, the Working Group reiterates and shares the concern expressed by the Human Rights Committee about the high levels of overcrowding in the prison system, leading to the use of police stations as permanent places of detention.[12] It therefore welcomes the recent adoption of the initiative to reform the infrastructure of the Federal Penitentiary Service, allowing for the creation of 18,000 additional places throughout the country during the period 2017 to 2023. The Working Group urges the authorities to take prompt and concrete steps to achieve that goal but wishes to remind the Government that this initiative will only have any tangible effect if other reforms, most notably the continued expansion of the use of alternatives to detention and ceasing the widespread use of pretrial detention, take place as well. In that regard, the Working Group recognizes the broadening of the scope of the programme of assistance for persons under electronic surveillance, enabling 80 per cent of the national territory to be covered.[13] The Working Group encourages the respective authorities to ensure without delay the extension of the electronic surveillance to the whole of the country.

5. Use of isolation and force in places of deprivation of liberty

43. The Working Group was concerned to observe that in some institutions there was no strict observance of the requisite procedures regarding the imposition of disciplinary sanctions, isolation and the use of force by guards. The Working Group was particularly alarmed by the reported use of isolation or punishment cells in some facilities, which was not preceded by any form of disciplinary adjudication process.

44. During an on-site visit, the Working Group found a small cell without windows and only bars for the door. The administration explained that this was not a punishment cell and that at times it was necessary to put inmates there when disturbances between inmates had taken place, in order to ensure their protection. However, the Working Group received detailed and consistent statements from those detained that being placed in the cell is in fact used as a punishment and even intimidation against those considered "disobedient". The Working Group was informed that such placements usually take place in the middle of the night, when large numbers of officers wearing full protective gear suddenly burst into a cell, drag inmates from their beds, at times naked, using considerable physical force and not giving inmates the option to comply peacefully and carry the "guilty" inmate to the small cell, where he or she would often be injected with a sedative to put him or her to sleep.

45. The Working Group is alarmed by these testimonies and reminds the authorities that any use of disciplinary punishment must be preceded by an adjudication process, at which

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[12] See CCPR/C/ARG/CO/5, para. 23.

[13] The Working Group was informed by the authorities that by means of resolution No. 86/16 of the Ministry of Justice and Human Rights, the scope of the programme of assistance for persons under electronic surveillance was broadened in terms of coverage of the population and of geographic areas. The programme is now applicable to adults who have been sentenced or prosecuted by the national, federal or provincial judiciary and are eligible for house arrest. The adoption of resolution No. 86/16 and subsequent signature of 19 cooperation agreements with provincial governments has enabled the authorities to cover 80 per cent of the national territory.

the person in question has the right to defend him or herself, as well as the right to appeal against the punishment imposed. The situation described to the Working Group is akin to further deprivation of liberty of those who are already deprived of liberty, through the placement in a de facto isolation cell. It is paramount that any such further deprivation of liberty is accompanied by safeguards to ensure that it is not arbitrary and that effective, accessible and independent complaints mechanisms are in place to provide redress.

46. The Working Group notes the establishment of several mechanisms for receiving complaints regarding institutional violence and monitoring it throughout the penitentiary system.[14] It also commends other measures reportedly undertaken in several provinces, such as the approval of the "Investigation guide on acts of torture in confinement" in the province of Buenos Aires and the training on human rights and the United Nations Standard Minimum Rules for the Treatment of Prisoners conducted for the penitentiary staff in the provinces of Buenos Aires, Catamarca, Jujuy, Salta and Santiago del Estero. The Working Group encourages the authorities to ensure that such training is delivered on a systematic basis in every province.

47. While the Working Group commends the above-mentioned efforts, it notes with concern the absence of a unified registration system for alleged acts of violence and for victims of torture and ill-treatment at the federal level and joins the call of the Human Rights Committee for concrete steps to be taken to establish and implement such a system.[15]

6. Juveniles in conflict with the law

48. The current juvenile justice system in Argentina sets the age of criminal responsibility at 16 and the Working Group was informed that nobody below the age of 16 could be detained. The Working Group recalls that the deprivation of liberty of anyone under the age of 18 must be a measure of last resort and must always fully comply with the safeguards of article 37 of the Convention on the Rights of the Child, irrespective of whether it occurs in the criminal justice setting or other settings, such as health care or the detention of migrants.

49. The Working Group observed that the exceptionality of deprivation of liberty in relation to juveniles was not fully enforced in Argentina. The delegation learned of instances of individuals below the age of 16, including one who was 8 years old, being deprived of liberty and allegedly ill-treated by law enforcement agents. The shortcomings related to alternatives to detention are more serious when it comes to juveniles and the Working Group is further concerned about the limited possibilities for alternatives to detention in relation to children.

50. The Working Group also expresses its concern at the allegations of harassment and acts of violence committed by the police and other law enforcement officers against children considered to be from vulnerable backgrounds, such as children living in low-income areas or on the streets. Such acts were reported to have occurred in several locations, including in the City of Buenos Aires and the provinces of Buenos Aires and Rosario.

51. The Working Group further observed that juveniles are held in so-called "reception centres", which are often a transitional location towards detention in the criminal justice system once they reach the age of 18. The conditions of deprivation of liberty in such places were entirely inadequate, with limited provision for education, vocational training and meaningful activities, which adversely impacts the ability of the children and their interest in rehabilitation. Currently, the availability of most of those activities rests with the goodwill of the staff in charge of the facilities, which is commendable but not sustainable in the long-term. Furthermore, in some instances, the "reception centres" are so remote that it becomes very difficult for parents to keep in contact with their children.

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[14] The Working Group was informed that these initiatives included the creation of direct hotlines by the National Directorate for Policies against Institutional Violence and by the Federal Penitentiary Service and the creation of the Monitoring and Inspection Service of Penitentiary Institutions.

[15] See CCPR/C/ARG/CO/5, paras. 13–14.

52. The Working Groups welcomes the initiatives of the authorities aimed at establishing a coherent juvenile justice system at the federal level, in compliance with the Convention on the Rights of the Child and other relevant legislation, and in full respect of the international human rights standards applicable to Argentina. The Working Group was informed that such initiatives at the national level included an act governing the first moments of detention of children, a protocol to denounce the ill-treatment of young people in closed institutions and a proposal for a law concerning the juvenile penal regime. In the province of Buenos Aires, the Ministry of Justice and Human Rights and the Ministry of Social Development have signed an agreement guaranteeing the rights of children in conflict with the law. The Working Group encourages Argentina to take prompt action to further that agenda at all levels.

7. Selectivity of the criminal justice system

53. Article 14 of the Constitution protects the human rights of all inhabitants of the nation and article 20 expressly states that foreigners in Argentina enjoy the same rights as citizens. This constitutional provision of equality before the law of all people in Argentina reflects articles 2 (1) and 26 of the International Covenant on Civil and Political Rights.

54. During the visit, the Working Group noted the selectivity in the application of the criminal justice system in relation to persons from different socioeconon..c backgrounds. Those from humble backgrounds and those in situations of vulnerability, such as children, including street children, indigenous peoples and migrants, and other groups which may be subject to discrimination, such as lesbian, gay, bisexual, transgender and intersex persons,[16] are more likely to be arrested by the police on the suspicion of the commission of a crime or "withheld" for verification of identity. The Working Group learned of instances of children under the age of 10 being arrested by the police, taken to police stations without their parents, legal guardians or social services being notified, and requested to sign documents without any understanding of what they were signing and without legal assistance.

55. Similarly, the Working Group was informed of deprivation of liberty in the context of public and social protests by members of different communities, including indigenous peoples, union members and political and social movements. The Working Group wishes to reiterate that international human rights instruments guarantee the right to peaceful assembly and freedom of expression and States should refrain from preventing or punishing peaceful protests. Any punishable actions should be clearly outlined in law so as to uphold the principle of legality in criminal and administrative law. Offences such as "traffic blockage" and "disobedience and resistance to authority" are inherently ambiguous and afford a high degree of discretion to the law enforcement authorities without sufficient safeguards to ensure protection against arbitrary detention. Moreover, the free flow of traffic should not automatically take precedence over the right to freedom of peaceful assembly.[17] The Working Group also notes that the Protocol on action by the State security forces during public manifestations, adopted by the Ministry of Security in 2016, if implemented, may create an increased risk of arbitrary detention by amplifying the discretionary powers of the security forces. The Working Group acknowledges that the Protocol has not been implemented in practice and urges the authorities to repeal it.

56. The Working Group was particularly concerned to learn about the violent repression of indigenous communities, as these communities engage in protests in support of their rights stemming from various international sources, especially International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169), which has been ratified by Argentina. The Working Group was informed of the excessive use of force, ill-treatment and humiliation suffered by the members of indigenous communities at the hands of law enforcement agents and private security companies. The Working Group was alarmed by the sweeping arrests of indigenous peoples engaged in social protests. The law

[16] The Working Group acknowledges the wish of lesbian, gay, bisexual, transgender and intersex persons in Argentina to describe themselves as a social movement.

[17] See opinions No. 28/2018 and No. 79/2017; see also A/HRC/20/27, para. 41.

enforcement agencies in areas where indigenous peoples reside have no protocols for the holding of such individuals that would respect their rights as indigenous peoples and allow for the observance of their religious, spiritual and medical needs.

57. Moreover, the Working Group was informed that the application of pretrial detention is by far more common among suspects in situations of vulnerability. For instance, the Working Group learned about numerous instances of harassment of transgender persons in specific locations in Buenos Aires City and province, on the basis of a generic allegation of suspicion of prostitution. Such targeting of individuals is obviously discriminatory and in violation of international norms.

58. In the view of the Working Group, the criminal justice system of Argentina treats those from humble backgrounds, in vulnerable situations or those engaged in social protest markedly differently from others and this should be addressed as a matter of priority. In that context, the Working Group reiterates the call to Argentina of the Committee on the Elimination of Racial Discrimination to ensure effective access to justice and respect for fundamental rights and due process guarantees in proceedings against, amongst other categories, human rights defenders, members of indigenous communities, people of African descent and migrants.[18]

B. Deprivation of liberty on the grounds of psychosocial disability

59. The Working Group commends the adoption of the Mental Health Act No. 26.657 in 2010, which introduced a progressive framework in this area. It established comprehensive, community care as a public policy objective and reformed the previous legal regulations regarding compulsory hospitalization under the provisions of article 482 of the Civil Code and national Law No. 22.914 of 1983 on persons with psychosocial disabilities and those with drug and alcohol addictions.

60. The Working Group learned of numerous alarming cases concerning the detention of individuals owing to their psychosocial disability. The Working Group met so-called social patients who do not have either the resources or the social networks to live supported in the community and are therefore confined in psychiatric institutions. Social patients often spend years and even decades confined in such institutions without any true prospect of release. Notably, the Working Group observed numerous instances in which individuals had spent between 30 and 63 years in a psychiatric institution, some of whom were social patients.

61. While periodic assessments are apparently carried out in some instances to ascertain whether it would be possible to move a person out of an institution, some social patients remain institutionalized indefinitely owing to the lack of family members and community support systems to look after them.

62. Furthermore, during its visits to penitentiary institutions, the Working Group learned that pursuant to article 34 of the Criminal Code, a security measure could be attached to the sentence imposed on persons with psychosocial disabilities. Such individuals are usually sent to the mental health-care facilities within a penitentiary for treatment and, in practice, their stay there becomes unlimited. Periodic assessments are carried out by a multidisciplinary team, but the ultimate decision on the release of the person rests with the judiciary and is thus not a decision made on the medical assessment of the health condition of the person concerned. An assessment of the "dangerousness of the individual" is required to be carried out by the judiciary, but there is a great reluctance to release such individuals as there are no guidelines on how such assessment ought to be carried out and a medical assessment is not part of it. The Working Group met individuals who have been in such places for 33 and 13 years, respectively, and the medical staff of the facility affirmed that while ongoing management of their psychosocial disability was necessary, there was no need for them to remain in a penitentiary institution. The Working Group emphasizes

[18] See CERD/C/ARG/CO/21-23, para. 26.

that penitentiary institutions are not suitable for the provision of care to persons with psychosocial disabilities, especially on a long-term basis

63. The Working Group is of the view that such examples of "social patients" and those sentenced through the attachment of a security measure to their sentence in fact constitute indefinite deprivation of liberty. While in both instances there are mechanisms in place for periodic reviews of the necessity of continued detention, without viable alternatives to detention or with the high threshold of "dangerousness" to satisfy, the review mechanisms are ineffective in practice.

64. The Working Group therefore shares the concern expressed by the Human Rights Committee during its latest review of Argentina under article 40 of the Covenant, about the prolonged placement of individuals in psychiatric institutions, shortcomings in the use of monitoring and supervisory mechanisms, and the failure to implement intermediate community support services.[19]

C. Deprivation of liberty in the context of migration

65. While there are currently no dedicated facilities for the detention of migrants in Argentina, the Working Group learned of plans to open such a facility in Buenos Aires. At present, most migrants are not actually held in the city. The Working Group shares the concern expressed by the Committee on the Elimination of Racial Discrimination that such plans could lead to detention not being used as a last resort.[20] It wishes to emphasize that detention in the context of migration must be an exception and will closely follow the implementation of the plans concerning detention facilities for migrants in Argentina.[21]

66. During its visit, the Working Group also noted the adoption of decree of necessity and urgency No. 70/2017 which effectively changed the provisions of the Migration Law No. 25.871. The newly adopted decree authorizes deprivation of liberty at the outset of the summary procedure, removing the principle of exceptionality, and allows detention prior to an expulsion order. The permitted detention period has been increased to 60 days, with the possibility of an indefinite extension for the duration of the proceedings. There are also restrictions on access to free legal aid and the terms for submitting an appeal have been significantly reduced. Under this framework, detention is the rule and liberty the exception, contrary to article 9 (3) of the International Covenant on Civil and Political Rights.

67. The Working Group has serious concerns about decree No. 70/2017 and the fact that this order by the executive significantly modifies the legal provisions of Law No. 25.871. Such major changes should have been subject to an open and transparent debate with a wide variety of stakeholders and discussed at the national legislature.

V. Implementation of opinions adopted by the Working Group

68. Since its establishment, the Working Group has adopted five opinions involving Argentina (see annex II). The Working Group invites the Government to submit updated information, including on whether the subjects of those opinions whose deprivation of liberty has been found to be arbitrary, have been released and reparations made to them, or whether any other action has been taken to implement the recommendations of the Working Group.

[19] See CCPR/C/ARG/CO/5, para. 21.

[20] See CERD/C/ARG/CO/21-23, para. 33.

[21] See Working Group on Arbitrary Detention, revised deliberation No. 5 on deprivation of liberty of migrants.

VI. Conclusions

69. The Working Group appreciates and commends the willingness of the Government to submit itself to scrutiny through the visit and considers that the findings in the present report offer an opportunity to support the Government in addressing situations of arbitrary deprivation of liberty.

70. The Working Group was informed of positive changes that were being implemented in Argentina in relation to deprivation of liberty, notably the launch of the Justice 2020 programme aimed at strengthening justice institutions in order to guarantee access to justice for all. In that framework, the Group welcomes the adoption of several legislative instruments, such as the law unifying the instruction and criminal procedures and the law for the strengthening of the federal criminal courts and unipersonal trials.

71. The Working Group identified the pattern of arrests by the police on the basis of a suspicion of a crime being carried out as being discriminatory and biased against those in situations of vulnerability, such as street children, members of indigenous communities, migrants and lesbian, gay, bisexual, transgender and intersex persons. A similar pattern was observed in relation to police powers to "withhold" persons to carry out identity checks, despite the lack of legislative provisions obliging everyone to carry an identification document.

72. The Working Group found that the existing legal framework which provides that pretrial detention must be an exceptional measure, is not reflected in the practice of the judiciary. That results in pretrial detainees constituting about 60 per cent of those detained in Argentina. Furthermore, the Working Group observed that the two-year limit for pretrial detention was often exceeded and could range from 4 to 15 years. The separation of pretrial detainees from convicted persons, envisaged by law, was not implemented in practice in many facilities the Group visited owing to, among other factors, the lack of space. In addition, pretrial detainees were required to follow the regime of sentenced persons in breach of article 10 (2) (a) of the International Covenant on Civil and Political Rights.

73. The Working Group observed limitations to applying alternatives to detention in practice, despite the existence of relevant legislative provisions at the federal level and in 19 provinces, as some of the individuals interviewed were given an alternative to detention, such as electronic tagging, if they could pay for it.

74. The Working Group is concerned about the widespread use of police stations to hold detainees for prolonged periods, with the majority of detainees being held at the pretrial stage for periods ranging from three days to five months. Moreover, in the province of Chubut, the Working Group found some persons who had already been sentenced being held in police stations.

75. The Working Group is also concerned about the lack of strict observance of procedures regarding the imposition of disciplinary sanctions, isolation and the use of force by guards. In particular, the Working Group received reports of the use of isolation cells in some facilities that was not preceded by any form of disciplinary adjudication. The absence of a unified federal registration system for alleged acts of violence is of further concern to the Working Group.

76. The Working Group identified individuals below the age of 16 being deprived of liberty in "reception centres" with limited provisions for education, vocational training and meaningful activities and very poor living facilities and infrastructure. Some children considered to be from vulnerable backgrounds were also allegedly ill-treated by law enforcement personnel. The Working Group welcomes efforts to establish a coherent juvenile justice system at the federal level in compliance with the international obligations undertaken by Argentina and encourages the authorities to implement that agenda at all levels.

77. The Working Group was informed of deprivation of liberty in the context of public and social protests by indigenous peoples, union members and members of

political and social movements. The Working Group is concerned that the criminal justice system treats differently those from humble backgrounds, those in vulnerable situations or those engaged in social protest, and calls upon the authorities to address this as a matter of priority.

78. The Working Group identified numerous instances when "social patients" who do not have the resources or social network to live in the community are confined to psychiatric institutions, in some cases for up to 63 years. The Working Group also observed that penitentiary institutions were being used for the provision of care to persons with psychosocial disabilities. The Working Group is of the view that these patterns in fact constitute indefinite deprivation of liberty.

79. The Working Group is concerned that plans to open a detention facility for migrants in Buenos Aires could lead to detention not being used as a last resort. It is also concerned about the recently adopted decree on necessity and urgency No. 70/2017 authorizing deprivation of liberty at the start of the summary procedure, removing the principle of exceptionality of detention in the migration setting.

VII. Recommendations

80. The Working Group recommends that the Government of Argentina undertake the following measures in relation to the institutional framework:

(a) Appoint the federal Ombudsperson so as to enable without delay the Office of the Ombudsperson to exercise the full range of the functions of the Ombudsperson in terms of the promotion and protection of human rights;

(b) Ensure that the Penitentiary Attorney's Office receives unfettered access to all places of deprivation of liberty, including penitentiary facilities, police stations, including airport holding rooms, juvenile institutions, holding rooms for migrants and other relevant facilities, in law and in practice. Ensure that unfettered access is granted not only to federal institutions but also to those other detention facilities where federal prisoners or others under the federal jurisdiction are held. Any instances of denial of access must be immediately reported and investigated promptly so as to ensure non-repetition. Ensure that the Penitentiary Attorney is systematically informed of all the different places of deprivation of liberty where persons are held, including in the context of migration;

(c) Enable the national preventive mechanism of Argentina, both at the federal and provincial levels, to start the discharge of its mandate effectively without any further delay. In accordance with article 29 of the Optional Protocol to the Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ensure that its provisions extend to all parts of the federal State without any limitations or exceptions and that the federal Government remains responsible for its implementation throughout Argentina;

(d) Ensure that any allegations of torture and ill-treatment trigger a prompt, thorough and independent investigation to bring those responsible to justice and provide reparations to the victims.

81. The Working Group recommends that the Government of Argentina undertake the following measures in relation to international human rights obligations:

(a) Ensure consistent interpretation of the international norms at the domestic level, both federal and provincial (local) level;

(b) Ensure that safeguards to protect against instances of arbitrary detention, including access to a lawyer, are observed in all instances when a person is held against her or his will by the authorities or other entities on behalf of the authorities, or with their consent or acquiescence. Ensure that this is duly reflected in law and in practice, including in guidelines for law enforcement personnel and training, both initial and ongoing;

(c) **Ensure that there are clear guidelines set out in legislation by the relevant authorities to put an end to the practice of detaining persons when such detention is not related to the commission of an offence, in accordance with article 9 of the International Covenant on Civil and Political Rights. Ensure that the powers of State enforcement officials to detain or hold persons for such purposes as "verification of identity" are accompanied by precise, detailed and binding guidelines so as to ensure that those powers are not used in practice in a discriminatory manner or lead to an abuse of power.**

82. **The Working Group recommends that the Government of Argentina undertake the following measures in relation to the excessive use of pretrial detention:**

(a) **Urgently revise the practice of pretrial detention across the country, both at federal and provincial levels, so as to ensure that pretrial detention becomes a measure of last resort in exceptional cases where the suspect may, for example, pose a risk of absconding, interfering with the investigation or committing a similar offence;**

(b) **Undertake concrete action to expedite the application of non-custodial alternatives. Provide additional training to professionals involved in the administration of justice with a view to ensuring that pretrial detention is not the norm and that its duration is strictly limited, in accordance with article 9 (3) of the International Covenant on Civil and Political Rights. Ensure that all persons who are detained, including those in pretrial detention, have effective access to a lawyer.**

83. **The Working Group recommends that the Government of Argentina undertake the following measures in relation to the availability and application of alternatives to detention:**

(a) **Review the current approach whereby the consideration of alternatives to detention is not automatic in all cases, but rather depends upon the initiative of the prosecution or defence. Broaden the scope of the application of alternatives to detention by expanding the applicability criteria and expediting the application of non-custodial alternatives. Take concrete steps, at both the federal and provincial levels, to revise the applicable legislation so as to ensure that alternatives to detention are widely used, especially for non-violent crimes and for both pretrial and post-sentencing stages, including pending an appeal;**

(b) **Enable and encourage the judiciary to apply alternatives to detention in all possible cases and especially in instances when sending a person to a custodial setting would involve sending him or her to an overcrowded or unsuitable custodial setting. Concrete steps, such as training and implementing a zero-tolerance policy on threats, must be urgently taken to enable the judiciary to use their discretion in deciding upon the application of alternatives to detention;**

(c) **Ensure that alternatives to pretrial detention are available to all throughout the country, based on objective criteria decided upon by the judiciary, not on discriminatory grounds or according to who can afford the use of such technologies;**

(d) **Ensure that education on human rights and the United Nations Standard Minimum Rules for the Treatment of Prisoners, in particular, form part of the initial and ongoing training for penitentiary staff in every province;**

(e) **A unified registration system for acts of violence and victims of torture and ill-treatment at the federal level should be established and implemented in practice;**

(f) **Undertake immediate steps to ensure that the deprivation of liberty in relation to juveniles becomes an exceptional measure;**

(g) **Cease immediately the holding of pretrial detainees in police stations and other facilities not designed for holding people for prolonged periods of time;**

(h) **Ensure prompt and effective legal assistance to all those held in police stations.**

84. The Working Group recommends that the Government of Argentina undertake the following measures in relation to the use of isolation and force in places of deprivation of liberty:

(a) Cease all practices, at both the federal and provincial levels, of placing inmates in isolation cells as a form of punishment without appropriate procedures and safeguards in place to guard against arbitrariness. Ensure that any use of isolation cells, irrespective of how such cells and/or places are described, is formalized with the appropriate procedures and governed by clearly stipulated regulations to guard against their arbitrary use, including periodic reviews of the necessity of such measures;

(b) Ensure that the placement of an inmate in an isolation cell is officially recognized as a form of disciplinary sanction, which must be subjected to the basic safeguards. Ensure that disciplinary rules are properly explained to all detainees upon admission and that copies of such rules are freely available in all detention facilities;

(c) Ensure that any application of disciplinary measures is strictly proportionate and respectful of human dignity and that there is a proper record of each instance of the application of such punishment. Ensure that any use of force is strictly necessary and proportionate, and that all instances of use of force are properly recorded, noting the type of force and/or physical restraint used and the reason for it. Ensure that any use of sedatives as a means of controlling detainees is made unlawful and is ceased immediately;

85. The Working Group recommends that the Government of Argentina undertake the following measures in relation to juveniles in conflict with the law:

(a) Take prompt action to implement the agenda aimed at establishing a coherent juvenile justice system in compliance with the Convention on the Rights of the Child and other relevant legislation in full respect of international human rights standards applicable to Argentina;

(b) Hold all juveniles deprived of their liberty in appropriate facilities and in adequate conditions by introducing provisions for education, vocational training and meaningful activities. Urgently address the dilapidated state of many juvenile facilities so that children receive the requisite care and education. Ensure that the disproportionate and unjustified use of force is prohibited and that this is entrenched in practice through initial and ongoing training of the staff of juvenile facilities;

(c) Ensure without delay that any preventive measures include the implementation of a comprehensive training programme for police and law enforcement officials on child rights.

86. The Working Group recommends that the Government of Argentina undertake the following measures in relation to selectivity in the criminal justice system:

(a) Ensure at all levels, through means such as legislation, guidelines and the training of law enforcement officials, that the de facto situation of differential treatment by the criminal justice system of persons from humble backgrounds, in vulnerable situations or those engaged in social protest ceases immediately;

(b) Ensure at all levels that the right to peaceful protest and freedom of expression are duly recognized in law and in practice and that those engaging in the peaceful exercise of those rights are not prevented from or punished for doing so. In that regard, ensure that particular attention is paid to the initial and ongoing training of law enforcement officials on the use of force and the exceptionality of arrests;

(c) Ensure that the federal and provincial legislatures clarify such offences as "traffic blockage" and "disobedience and resistance to authority" by introducing robust safeguards to ensure protection against arbitrary detention;

(d) Urgently repel the Protocol on action by the State security forces during public manifestations adopted by the Ministry of Security in 2016 so as to prevent the

expansion of the discretionary powers of the security forces. Convene a new working group, involving civil society, to elaborate a new protocol on the actions of the security forces during public manifestations in an inclusive and transparent manner;

(e) Ensure respect, at both the federal and provincial levels, for the rights of indigenous peoples. Urgently provide the law enforcement agencies in areas where indigenous peoples reside with protocols for the holding of such individuals that would respect their rights as indigenous peoples and allow for the observance of their religious, spiritual and medical needs;

(f) Immediately cease the use of the antiterrorism law to criminalize indigenous peoples and the leaders of rural communities for activities related to the defence of their territory and their culture, which are elements duly protected by international human rights law;

(g) Ensure that all law enforcement authorities refrain from the disproportionate use of force. Address the situation of differential treatment by the criminal justice of persons from humble backgrounds, in vulnerable situations or those engaged in social protest.

87. The Working Group recommends that the Government of Argentina undertake the following measures in relation to deprivation of liberty on the grounds of psychosocial disability:

(a) Double the efforts to provide for community support systems for so-called social patients without a family willing to look after them, in order to eliminate the practice of indefinite institutionalization;

(b) Ensure that the term "dangerousness" as it currently appears in the Criminal Code, and article 34 in particular, is revised and clarified, in order to set a high threshold of "dangerousness" for the internment of patients and to render the existing review mechanisms of the necessity for continued detention effective in practice;

(c) Ensure the full enforcement of international standards and the Mental Health Act No. 26.657 by, inter alia, putting in place effective review mechanisms. Ensure that individuals suffering from psychosocial disabilities are able to live in the community with appropriate support provided by the State.

88. In the context of migration, the Working Group recommends that the Government of Argentina ensure that deprivation of liberty in the context of migration is an exceptional measure and as such, is subject to an individual assessment. The Government should ensure that any detention in the context of migration is only justified if it pursues a legitimate aim, is both proportionate and necessary, and comes under judicial oversight.

Annex I

Detention facilities visited

Autonomous City of Buenos Aires

Hospital Dr. José Tiburcio Borda

Police station No. 32

Province of Buenos Aires

Ezeiza federal penitentiary, complex I

Ezeiza federal penitentiary, complex IV

Holding cells at Ezeiza International Airport under the migration authority

Holding cells at Ezeiza International Airport under the airport security police

Police station No. 1 San Justo, La Matanza

District police station northeast 3RA

Hospital Dr. Alejandro Korn, centre of primary attention No. 34

Province of Jujuy

Federal penitentiary unit No. 22

Provincial penitentiary unit No. 3 of Alto Comedero

Provincial penitentiary unit No. 7 of Alto Comedero

Penitentiary unit for minors of Alto Comedero

Psychiatric hospital Néstor Sequeiros

Juvenile admission centre, Malvinas, Jujuy

Province of Chubut

Provincial penitentiary institute

Police station of Rawson

Police station No. 2 of Trelew

Police station of Playa Unión

Socio-educational orientation centre Trelew

Annex II

Opinions of the Working Group on Arbitrary Detention concerning Argentina

Opinion No. 47/2011 concerning Carlos Federico Guardo (A/HRC/WGAD/2011/47).

Opinion No. 52/2011 concerning Iván Bressan Anzorena and Marcelo Tello Ferreyra (A/HRC/WGAD/2011/52).

Opinion No. 20/2013 concerning Guillermo Luis Lucas (A/HRC/WGAD/2013/20).

Opinion No. 31/2016 concerning Milagro Sala (A/HRC/WGAD/2016/31).

Opinion No. 73/2017 concerning María Laura Pace and Jorge Oscar Petrone (A/HRC/WGAD/2017/73).

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Report of the Working Group on Arbitrary Detention on its visit to Sri Lanka

Note by the Secretariat

At the invitation of the Government, the Working Group on Arbitrary Detention visited Sri Lanka from 4 to 15 December 2017. The Secretariat has the honour to transmit to the Human Rights Council the report on that visit, which contains the findings, conclusions and recommendations of the Working Group relating to the deprivation of liberty in the context of the criminal justice system and the Prevention of Terrorism Act; with respect to children, disability or mental health condition; for rehabilitation purposes; on discriminatory grounds; and of asylum seekers, refugees and migrants.

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Report of the Working Group on Arbitrary Detention on its visit to Sri Lanka*, **

I. Introduction

1. At the invitation of the Government, the Working Group on Arbitrary Detention conducted an official visit to Sri Lanka from 4 to 15 December 2017. The Working Group was represented by José Antonio Guevara Bermúdez (Mexico, Chair-Rapporteur), Leigh Toomey (Australia, Vice-Chair) and Elina Steinerte (Latvia, Vice-Chair) and accompanied by staff from the Office of the United Nations High Commissioner for Human Rights. The Working Group would like to thank the United Nations country team, the Resident Coordinator and the Human Rights team for supporting the visit. The Working Group was saddened to learn that the Resident Coordinator passed away not long after its visit.

2. The Working Group wishes to reiterate its gratitude to the Government for the invitation and for its cooperation before and during the visit. The Working Group met with the authorities in Colombo, Anuradhapura, Vavuniya, Trincomalee, and Polonnaruwa (see annex I for a list of the ministers and other authorities, with whom the Working Group met). The Group visited over 30 places of deprivation of liberty (see annex II) and was able to confidentially interview over 100 persons deprived of their liberty.

3. The Working Group also recognizes the numerous stakeholders within the country who shared their perspectives, including civil society, lawyers, academics and jurists, as well as individuals who have been or are deprived of their liberty.

4. The Working Group shared its preliminary findings with the Government on 15 December 2017. It intends to continue its constructive dialogue with the Government.

II. Overview of the institutional and legal framework

A. International human rights obligations

5. Sri Lanka is a party to the International Covenant on Civil and Political Rights;[1] the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of Persons with Disabilities; the International Convention for the Protection of All Persons from Enforced Disappearance; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the First Optional Protocol to the International Covenant on Civil and Political Rights on an individual complaints procedure; and the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography.

6. On 4 January 2018, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment entered into force in Sri Lanka. The Working Group commends this important development and encourages the Government to ensure the full independence of the national preventive mechanism and

* Circulated in the language of submission only.

** The annexes are being circulated without editing.

[1] On 19 November 2015, the Government notified the Secretary-General of the termination of all derogations previously notified under the Covenant, pursuant to the lapse of the emergency regulations in August 2011.

sufficient resources to fulfil its mandate, which covers all places of deprivation of liberty in Sri Lanka.

B. National legal framework

7. The Constitution of Sri Lanka was adopted in 1978 and has been amended 19 times. Chapter III of the Constitution, entitled "Fundamental rights", includes the prohibition of torture (art. 11), the right to equality before the law and equal protection of the law (art. 12), freedom of speech, assembly, association, and movement (art. 14), and freedom of thought conscience and religion (art. 10). Article 13 enshrines the prohibition of arbitrary arrest, detention and punishment, and of retroactive penal legislation. It includes relevant guarantees such as the right to be brought before a judge, the right to a fair trial by a competent court, and the presumption of innocence. Article 17 guarantees the right to seek a remedy before the Supreme Court for the infringement of fundamental rights by executive action. Chapter XVI of the Constitution, entitled "The Superior Courts", contains article 141, which enshrines the power of the Court of Appeal to issue writs of habeas corpus.

8. The Penal Code of 1883 defines the conduct of individuals and corresponding offences under criminal law and their respective penalties. The Code of Criminal Procedure of 1979 regulates the investigation, trial and punishment of criminal offences, including the conduct of arrest operations, the issuance of warrants and the use of remand, bail and other procedural guarantees.

9. Some of the legislative framework relevant to deprivation of liberty is very outdated, particularly the subordinate regulations and ordinances which date back to the nineteenth century and require revisions to bring them into conformity with the needs of modern Sri Lankan society. The Working Group acknowledges the ongoing process of constitutional reform and notes that further reform of the national legal framework would facilitate its compliance with international obligations with regard to prohibition of the arbitrary deprivation of liberty.

III. Positive measures and initiatives

A. Engagement with international human rights mechanisms

10. The Working Group commends the constructive cooperation of the Government of Sri Lanka with the international community, in particular the United Nations human rights mechanisms. The visit of the Working Group and the recent visits of other special procedures of the Human Rights Council are clear examples of such engagement.

11. The Working Group welcomes information that the Ministry of Foreign Affairs, together with the relevant stakeholders, is planning to establish a permanent national mechanism for reporting and follow-up to coordinate the engagement of Sri Lanka with the international human rights mechanisms, including the special procedures and the universal periodic review, which would generate timely reports and follow-up on recommendations.

12. The Working Group also notes the signing on 7 June 2018 by the Government and the International Committee of the Red Cross (ICRC) of an Agreement on cooperation and humanitarian activities to benefit persons deprived of their liberty, allowing ICRC access to all detainees and detention centres under the purview of the Government other than Sri Lankan military personnel detained under military law in military establishments.

B. Implementation of Human Rights Council resolution 30/1

13. The Working Group notes the commitments undertaken by Sri Lanka under Human Rights Council resolution 30/1 on promoting reconciliation, accountability and human rights. The Working Group welcomes the establishment of the Office of Missing Persons and the appointment of the commissioners in February 2018. Without addressing past

violations, including cases of abductions and enforced disappearances, efforts made by the Government to address instances of arbitrary detention occurring currently will be seriously undermined.

C. National human rights action plan

14. The Working Group welcomes the adoption of the national action plan for the protection and promotion of human rights for the period 2017–2021, which was officially launched by the Government in November 2017. The Working Group was informed that there will be a new coordination mechanism established by the Government, as well as an open platform for stakeholders, including civil society and the Human Rights Commission, to monitor the implementation.

D. Right to Information Act

15. The Right to Information Act of 2017 is a positive step towards the promotion and protection of human rights in Sri Lanka, and can make a significant contribution towards addressing arbitrary deprivation of liberty by allowing access to information which would otherwise be available only to law enforcement agencies.

E. National Human Rights Commission

16. The fact that the Human Rights Commission is able to access a wide variety of places of deprivation of liberty without hindrance from the authorities, including for unannounced visits, is positive. However, the Working Group is seriously concerned that there is no institutionalized practice by the authorities to systematically seek the views of the Commission on draft legislation, despite its clear mandate to review legislation under section 10 of the Human Rights Commission of Sri Lanka Act, No. 21 of 1996.

17. The Human Rights Commission will be designated as the national preventive mechanism, in accordance with the terms of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Working Group welcomes the fact that the Government sought the views of the Human Rights Commission prior to its designation as the national preventive mechanism. However, the Commission is likely to require further resources, both financial and human, to enable it to discharge its new mandate effectively, as it is already overstretched in its ability to implement its current mandate.

F. Fundamental rights procedure

18. According to articles 17 and 126 of the Constitution, any aggrieved party or his or her legal representative may file a petition before the Supreme Court for a remedy with respect to the infringement of fundamental rights through executive or administrative action by the State. The fundamental rights procedure is a potentially important mechanism for the release of individuals who have been arbitrarily deprived of their liberty. However, it is underutilized owing to flaws in the procedure, including a one-month limitation for petitions, the lack of standing of public interest petitions and the fact that the petition must be made to the Supreme Court, which is not easy for people living outside Colombo.

IV. Main findings concerning the right to personal liberty

19. In determining whether the information provided, including from persons interviewed during the visit, raised issues regarding the arbitrary deprivation of liberty, the Working Group considered the five categories of arbitrary deprivation of liberty outlined in paragraph 8 of its methods of work (A/HRC/36/38).

20. The Working Group is mindful of the complex history of Sri Lanka, which has seen the country live under state of emergency legislation for decades. However, it has now returned to peace and, as a democratic country, it must embrace the rule of law. That requires strict adherence to the rule of law by all public officials and full respect for the right to personal liberty, whereby deprivation of liberty may occur only in instances strictly defined in legislation. Throughout its visit, the Working Group observed instances of the authorities using deprivation of liberty as the automatic response to a wide variety of situations in which deprivation of liberty was not absolutely necessary or prescribed by law.

A. Deprivation of liberty in the context of the criminal justice system

1. Pretrial detention

21. In regular criminal matters, suspects are rarely held in police stations beyond a 24-hour period and are normally produced before the courts at the end of this period. At that point, the accused can either be granted bail or remanded in custody. According to information received, the current prison population of Sri Lanka is 20,598, of which 11,009 individuals are held in pretrial detention. Over half the present prison population is awaiting trial, which is exceptionally high. It is common for pretrial detention to continue for 3–4 years and in some instances even longer, up to 10 years, and it is often followed by a lengthy trial. Time spent in pretrial detention is not always taken into account when the final sentence is calculated, and is left to the discretion of the judge. People on remand are held in dire conditions and often choose to plead guilty to expedite the proceedings. In a number of cases, accused persons have spent numerous years in pretrial detention but were subsequently acquitted and released from prison without any acknowledgement of wrongful imprisonment or compensation for the years spent in custody.

22. Such lengthy pretrial detention is in itself incompatible with article 9 of the International Covenant on Civil and Political Rights and may lead to arbitrary deprivation of liberty. The Government must take effective steps to reduce it by: (a) promoting the use of bail and other alternatives to detention; (b) expediting investigations; and (c) expediting court proceedings by ensuring that there are sufficient prosecutors and judges in the country. Time spent in custody during the pretrial stage must always be taken into account when the final custodial sentence is determined and those acquitted and released from pretrial detention must have an automatic right to acknowledgement of wrongful imprisonment and compensation for the years spent in custody.

2. Bail

23. The bail system in Sri Lanka, which could alleviate the extensive resort to pretrial detention by the authorities, is problematic. The Working Group learned of numerous cases in which accused persons were granted bail, but remained in custody because they were unable to afford the bail or provide the requisite sureties. Such situations render the bail system ineffective. The Working Group recalls that whenever possible, non-custodial measures should be used instead of pretrial detention and that those non-custodial measures must be realistic.

3. Undue delays in trials

24. The excessive length of trials in Sri Lanka, sometimes lasting for years or even decades, is of great concern. Such delays are reportedly caused by a number of factors, including the lack of sufficient investigative capacity of the police; insufficient resources in the Office of the Attorney General and the courts, both in infrastructure and personnel, to deal diligently with pending cases; poor case management policies that do not prioritize consecutive court hearings; legal practices allowing for repeated postponement of hearings that take little account of the urgency to end remand; and lack of accountability for long judicial delays. Under international human rights law, detained persons are entitled to stand trial within a reasonable time or to release. Persons who are not released pending trial must be tried as expeditiously as possible.

4. Confessions obtained by torture and ill-treatment

25. Numerous alarming allegations were received concerning the use of torture and other cruel, inhuman or degrading treatment by the police, including the Criminal Investigation Department and the Terrorist Investigation Division, in order to obtain confessions from detainees, either to facilitate the investigation or, in certain instances, to be used as evidence in court. The Working Group recalls that prohibition of torture and ill-treatment is absolute and that breach of that prohibition may also lead to a breach of the prohibition of arbitrary deprivation of liberty. Any confession should be made before a judge, who must ensure in all cases that the Government has met its obligation in demonstrating that it was given without coercion. That safeguard must be understood in terms of the absence of any direct or indirect physical or undue psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt. The judges should consider inadmissible as evidence any statements or confessions found to have been obtained through torture or ill-treatment and should order immediate investigations into such allegations.[2]

5. Right to challenge the legality of detention

26. The right to challenge the legality of detention is not effectively guaranteed in Sri Lanka. The lack of legal assistance guaranteed for all detainees from the moment of arrest, the unjustified delay in criminal proceedings and judicial remedies for the protection of fundamental rights, the excessive use of pretrial detention, the lack of effective access to bail or other alternatives to detention and the practice by the police of obtaining statements without the presence of a lawyer and through coercion, are some of the abuses that could be prevented if effective control of the legality of detention ordered by the judiciary was in place.

27. Persons deprived of their liberty must be informed, in a language and format that the detainee understands, of the right to legal representation, the reasons justifying the deprivation of liberty, possible judicial avenues to challenge the arbitrariness and lawfulness of the deprivation of liberty and the right to bring proceedings before a court and to obtain without delay appropriate and accessible remedies.[3] The review by a court of the legality of deprivation of liberty must be carried out on a regular, periodic basis and must involve a substantive, individualized assessment of whether the deprivation of liberty is necessary, reasonable and proportionate in the circumstances of each case.

6. The right to legal assistance

28. The right to legal assistance is far from guaranteed in different contexts of deprivation of liberty, including in the criminal justice system. Persons arrested or detained by the police are not systematically informed of their right to legal assistance, which affects their access to counsel. Furthermore, while lawyers seem to have access to their clients at certain stages of their detention, the right of the detainee to legal assistance is not sufficiently protected by law. In practice, most detainees only have access to legal representation at the time of their court appearance.

29. The right to legal assistance should be guaranteed by law so that it applies from the moment of arrest and before an accused person makes a statement to the police.[4] The Government must abide by its international human rights obligations with regard to the right of every person to legal assistance. The Government should ensure that the police, the courts, and public officials at the local level are aware of the importance and availability of legal aid services in order to communicate this information to the relevant stakeholders.

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[2] See, for example, Committee against Torture general comment No. 2 (2007) on the implementation of article 2, para. 6; Human Rights Committee general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 41; United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, guideline 12; and A/HRC/25/60.

[3] See United Nations Basic Principles and Guidelines, principles 1, 4, 5, 7 and 8.

[4] Ibid., principle 9 and guideline 8.

Access to legal aid services, particularly for those in a situation of vulnerability and marginalization, should be increased.

7. Presidential pardons and abolition of the death penalty

30. The Working Group notes that the exercise of presidential pardons for convicted prisoners should be regulated by clear guidelines to avoid arbitrary application and ensure that there is a means for release on compassionate grounds. Sri Lanka should abolish the death penalty, establish a formal moratorium on all pending executions, commute all death sentences to prison sentences, and pardon long-term prisoners.

B. Deprivation of liberty in the context of the Prevention of Terrorism Act

31. The Prevention of Terrorism Act, Law No. 48 of 1979, is still operational in Sri Lanka but the Working Group was informed by the authorities that no more arrests are carried out under the provisions of the Act. While there have been a number of arrests since 2015, those numbers seem to have diminished. The National Human Rights Commission should be notified of all arrests under the Prevention of Terrorism Act.

32. The numerous severe restrictions to fair trial guarantees entailed by the application of the Prevention of Terrorism Act are of great concern. For instance, under part II of the Act, a suspect does not have the right to legal assistance until the court proceedings commence. In practice, this means that any statements, including confessions, which normally form an essential part of prosecution under the Act, are given in the absence of lawyers. The Working Group recorded numerous instances in which those convicted under the Act had allegedly been subjected to harassment, intimidation, threats and even ill-treatment and torture to extract confessions. Numerous instances were reported of confessions written in Sinhala signed by suspects who did not understand the language. The Working Group was informed that this practice was ceasing and that Tamil suspects are instead forced to write and sign their own confessions in Tamil to avoid any accusations regarding their inability to speak Sinhala.

33. The absence of a lawyer at the time of statements being recorded by the police under the Prevention of Terrorism Act is a crucial factor, which contributes to the risk of confessions extracted under ill-treatment and torture. The Working Group strongly urges the Government to review this practice to guarantee all suspects, irrespective of the charges, immediate access to a lawyer, free of charge. In addition, any confessions should only be recorded in front of a judge.

34. Furthermore, the so-called "voir dire" inquiry may be used to determine whether a confession has been made voluntarily or not. In accordance with this procedure, the suspect has to prove that a confession presented to the court has been extracted under duress. Initially, it falls upon the prosecution to show that the statement has been freely given, the standard of proof being that of the balance of probabilities. It then falls upon the suspect to prove beyond reasonable doubt that the confession has been extracted under duress. However, given the exceptionally lengthy pretrial periods which normally precede the trial stage and the lack of access to a thorough medical assessment in the initial stages of custody, it is nearly impossible for the suspects to reach this high standard of proof. The Working Group wishes to recall that the breach of the absolute prohibition of torture and ill-treatment can lead to the breach of the prohibition of arbitrary detention.

35. Equally, people investigated under the Prevention of Terrorism Act face significant challenges in accessing bail, which is only possible with the agreement of the Attorney General, whose consent is given extremely rarely. That has led to the de facto exclusion of suspects under the Prevention of Terrorism Act from the ordinary bail regime, which means that once a person has been arrested under the provisions of the Act, she or he must remain in pretrial detention until the completion of proceedings. However, pretrial detention under the Act is even longer than under regular criminal proceedings. This exceedingly long period is usually between 10 and 15 years and is sometimes even longer, with the longest period reported to the Working Group being 22 years. Moreover, some individuals have

been acquitted and released after an exceptionally long pretrial period, but without any acknowledgement of wrongful imprisonment or compensation.

36. Any period of pretrial detention, including for the most serious offences and terrorism-related crimes, must remain exceptional and must never be of excessive length.[5]

37. According to the information received at the time of the visit, there were 69 suspects who had been remanded in custody and charged under the Prevention of Terrorism Act, of whom 59 were of Tamil origin. There were a further 17 suspects who had been remanded in custody under the Act but had yet to be charged.

38. The Working Group was informed of cases which had been recently transferred from the High Courts in Vavuniya and Trincomalee (with court proceedings in Tamil), to Anuradhapura (with proceedings in Sinhala). In the High Court of Anuradhapura, there was only one Tamil translator for all court proceedings, which was causing delays. Equally, there were significant delays in relation to the translation of court documents. At the time of the visit, in the High Court of Anuradhapura, in addition to the cases that had been transferred, there were 17 suspects under the Prevention of Terrorism Act, of whom 15 were of Tamil origin. The language barrier that Tamil suspects face in the courts is a serious impediment to the full implementation of their fair trial rights and seriously undermines the credibility of the proceedings.

39. Furthermore, the Working Group was informed that there were no Tamil-speaking judges in the Supreme Court in Colombo at the time of the visit. The Government must undertake reforms in the delivery of justice to ensure that everyone is treated equally before the courts in Sri Lanka.

40. The Working Group urges the Government to repeal the Prevention of Terrorism Act without delay. The regime put in place under the Act falls significantly short of international standards in relation to the right to a fair trial and is of such gravity as to give deprivation of liberty under the Act an arbitrary character. The replacement of the Act with new counter-terrorism legislation which complies with international human rights standards and best practices is one of the short-term goals of the Government, as stipulated in the national action plan, and should be implemented immediately.[6]

C. Deprivation of liberty of children

41. The Working Group is deeply concerned that over 14,000 girls and boys under the age of 18 are deprived of their liberty in 371 childcare institutions across Sri Lanka. Only 33 of those institutions are operated by the Government. Sri Lanka's legal framework regarding children falls short of international best practice in several areas. They include the failure to: (a) stipulate a uniform definition of a child and an internationally acceptable minimum age of criminal responsibility; (b) ensure that the best interests of the child is the primary focus and that the deprivation of a child's liberty is a matter of last resort and for the shortest possible period; (c) prioritize the diversion of children away from the criminal justice system, and (d) distinguish between the responses applicable to children in conflict with the law and children in need of care and protection.

1. Children in conflict with the law[7]

42. According to the Convention on the Rights of the Child, to which Sri Lanka has been a party since 12 July 1991, a person is considered a child until he or she reaches the age of 18. This definition has not been incorporated into Sri Lankan legislation in a uniform manner. The Working Group acknowledges that on 21 May 2018, the parliament passed

[5] Ibid., guideline 18.

[6] See also statement by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on his visit to Sri Lanka, July 2017, available from www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21884&LangID=E.

[7] Convention on the Rights of the Child, art. 37, andUnited Nations Basic Principles and Guidelines, principle 18 and guideline 18.

Act No. 10 of 2018 to amend chapter 19 of the Penal Code, which increased the minimum age of criminal liability from 8 to 12 years of age. The Working Group encourages a further increase to a minimum of 14 years, in line with the Convention on the Rights of the Child.[8] While the legal framework in Sri Lanka does not provide for the deprivation of liberty of children who have been in conflict with the law, in practice such children are being detained in several different types of facilities known as "certified schools", "detention homes", "remand homes" or "approved homes". The distinction between the types of services offered by these facilities, their criteria for intake and the period of admission is not clear. Some children are placed in these facilities while criminal cases against them are being heard in the courts. Other children are residing in these facilities for their own protection, including girls under 18 years of age who have been involved in underage relationships. In all cases, the placement is ordered by the courts.

43. Although placement of children in these facilities is considered an alternative to imprisonment, it appears to be used by the courts as the primary option, rather than the last resort. The placements involve significant periods of deprivation of liberty, including for up to three years in certified schools. In some cases, children continue to be held in these institutions after they have reached the age of 18. Children between the ages of 16 and 18 are also treated in the same way as adults under Sri Lankan law and in some cases detained in prisons with adult offenders.

2. Children in need of care and protection

44. Children in need of care and protection, such as orphaned, abused, abandoned and destitute children, are placed in institutions known as "receiving homes", "national training and counselling centres", "approved schools" or "voluntary children's institutions" throughout Sri Lanka. Some facilities are State-funded, although most are privately managed by non-governmental groups. At present, placements are made under the Children and Young Persons Ordinance 1939 and its amendments. Despite the fact that this ordinance is only applicable to children aged 12 and above, children as young as 8 are being admitted to remand and care homes.

45. The Working Group was informed that such placements, which can occur without the consent of the child, are decided on by the Provincial Commissioner or on a referral by the courts. The legal basis for many placements is unclear and appears to be based on an overly broad discretion exercised by the Provincial Commissioner and the courts to detain children. The Working Group observed registries recording the placement of children that stated that the children had been detained because they had "escaped from their homes" or for their own "safety", including situations in which parents felt that they could not exercise sufficient control over their children. The authorities administering homes for children appear to defer to court orders, rather than prioritizing the best interests of the child.

46. During the placement, the children undertake counselling and other activities designed to prepare them for life outside the institution, such as handicrafts, but only some attend school and have the opportunity to learn alongside other children in a formal educational setting. At present, children in need of care are held with children in conflict with the law, contrary to international standards that require their strict separation. Steps are being taken to amend the law through the children (judicial protection) bill, so that children in need of care are placed in separate homes to children in conflict with the law. Some children detained in care homes have reportedly been beaten and sexually abused, particularly in understaffed and underresourced centres, where staff have not received appropriate training or clear guidelines on appropriate disciplinary methods for children under their care. It is not clear whether the children, as survivors of abuse, are receiving any psychiatric assessment or counselling and appropriate medical care. Care homes are not the only setting in which children are deprived of their liberty for their protection. The Working Group observed the case of a 7-year-old child who was detained overnight in a police station in protective custody owing to a lack of care at home. The Working Group recalls

[8] See Committee on the Rights of the Child, general comment No. 10 (2007) on children's rights in juvenile justice, para. 33.

that protective custody must be supervised by a judicial authority and must only be used as a last resort and when the victims themselves desire it (see E/CN.4/2002/77, para. 46).

47. The Working Group welcomes the steps taken by the Government to address these issues, including the establishment of two dedicated juvenile courts in Jaffna and Colombo, the addition of child desks in police stations and a Child Unit in the Attorney General's Department, and development by the Department of Probation and Child Care Services of an alternative care policy that emphasizes community-based rehabilitation of children. The Working Group also acknowledges that the remand and care homes are providing a much-needed service for children who have no other support or have been subject to abuse in their family homes and pregnant girls. Nevertheless, the deprivation of liberty of children in these institutions must be subject to a clearly defined legal basis, regularly reviewed by an independent judicial authority and only undertaken as a last resort and for the shortest time possible.

D. Deprivation of liberty on the grounds of disability or mental health condition[9]

48. The Working Group learned that placement of individuals in hospitals and treatment facilities on the basis of a psychosocial disability or a mental health condition, such as schizophrenia, bipolar disorder and depression, is increasingly common in post-conflict Sri Lanka. That poses serious risks for persons with psychosocial disabilities, who are particularly at risk of being deprived of their liberty for long periods without the ability to seek a review of the reasonableness, proportionality and necessity of the detention. Around 8,000 persons are admitted to the National Institute of Mental Health (Angoda) each year for treatment. They can come to the facility on their own or can be brought by their family members, the police or prison authorities.

49. The Working Group received no clear explanation of the process of admitting individuals to psychiatric or similar institutions, but it appears that persons with psychosocial disabilities or a mental health condition are typically involuntarily detained either after referral by a court order in a criminal matter, or if they are believed to have a "serious psychosocial disability that requires treatment". The Working Group was informed that in criminal matters, the individual is kept under review by a visiting magistrate who can order their discharge. For individuals admitted for treatment, the process is significantly longer, with some persons remaining institutionalized for decades and even the rest of their lives. Older persons, persons with physical disabilities or those with co-occurring drug addiction are particularly at risk of indefinite detention in such facilities.

50. Once a decision is made by a treating psychiatrist to admit a person to the acute or intermediate care wards, that individual cannot challenge the decision before a judicial authority, which is a matter of serious concern. The Working Group urges the Government to ensure that the right to challenge the legality of detention before a court applies to everyone equally, including those with psychosocial disabilities. There appears to be no criteria for admission, including safeguards to prevent the arbitrary deprivation of liberty. It appears that the legal basis upon which the admission of the individuals takes place are the Mental Disease Ordinance 1873 and the Mental Disease Act 1956. Moreover, admission to treatment facilities is not limited to those with a psychosocial disability, but includes persons with intellectual disabilities and persons who could be discharged but have no family members that can be traced or are willing to assist them to live in the community. Such a situation does not correspond to the internationally accepted human rights standards and the Government must ensure community-based support is provided to such individuals. While the Working Group welcomes the commitment of the National Institute of Mental Health to prioritizing community-based support, wherever possible, this appears to be a very limited practice. The Government must urgently review and amend this legislation and policies in order to implement its obligations under the Convention on the Rights of Persons with Disabilities.

[9] See United Nations Basic Principles and Guidelines, principle 20 and guideline 20.

E. Deprivation of liberty for rehabilitation purposes

1. Rehabilitation of ex-combatants

51. At the time of the visit, eight men had been deprived of their liberty at Poonthottam Rehabilitation Centre in Vavuniya, which was administered by the Ministry for Prison Reforms, Rehabilitation, Resettlement and Hindu Affairs and was the only rehabilitation centre for ex-combatants that remained operational in Sri Lanka. The eight men were originally arrested and charged under the Prevention of Terrorism Act, with various allegations made against them of having assisted or been involved in activities of the Liberation Tigers of Tamil Eelam. They were held for substantial periods of time (ranging from 10 to 22 years) in pretrial detention at New Magazine prison before being transferred to Poonthottam for up to two years of rehabilitation. The Working Group was informed that their agreement to undergo rehabilitation at Poonthottam was only secured by the prospect of spending one to two years in rehabilitation rather than many years awaiting trial.

52. The Working Group regards the ongoing deprivation of liberty of those men and others who have been or will be sent to Poonthottam for rehabilitation in future under these circumstances, as arbitrary. The deprivation of liberty at Poonthottam lacks a legal basis and, in the case of the current eight detainees, was the result of numerous grave violations of the right to a fair trial, including a lack of effective legal assistance, the inability to access the evidence against them and undue delay in being tried. Testimony and reports received from individuals who have been released from Poonthottam indicate that, along with their family members, they continue to be subject to harassment and surveillance by the authorities. According to the testimony received, the certificate issued at the completion of vocational training at the facility does not prevent released persons from being rearrested on the same grounds at any time. The Working Group learned of one case where a person was released from a rehabilitation centre, only to be rearrested and transferred to another rehabilitation centre, effectively creating a revolving door of repeated deprivation of liberty. Given the serious issues surrounding the arbitrary deprivation of liberty, the Working Group strongly urges the Government to close down the Poonthottam Rehabilitation Centre, unconditionally release those who remain in the centre and provide them with the appropriate compensation and other reparations.

2. Rehabilitation programmes for drug users

53. According to the information received from the Government, in 2016 there were 79,578 persons in Sri Lanka arrested for drug related offences. Sixty per cent of those individuals were arrested in relation to cannabis, while 35 per cent were arrested in relation to heroin. Of those arrests 66.9 per cent related to the crime of drug possession and 33.1 per cent related to the consumption of drugs. In the same year, the total number of prison admissions was 24,060, of which 10,535 persons had allegedly committed offences related to drugs. The Working Group notes that almost 50 per cent of the persons deprived of their liberty in the criminal justice system have allegedly committed non-violent crimes related to drugs, which is a very high percentage.

54. In 2016, 2,355 persons were treated for drug abuse. Both the Government and non-governmental organizations provide residential care, treatment and rehabilitation services for those dependent on drugs. Admissions to such treatment and rehabilitation centres can be either voluntary or compulsory. In relation to compulsory rehabilitation, the Bureau of the Commissioner General of Rehabilitation of the Ministry for Prison Reforms, Rehabilitation, Resettlement and Hindu Affairs, informed the Working Group that some rehabilitation camps for former Liberation Tigers of Tamil Eelam cadres have been turned into rehabilitation camps for "drug addicts". The aim of the programmes in such rehabilitation camps is the rehabilitation of "addicts" through psychological and medical therapy, with the secondary aim being that of the reduction in the overcrowding in prisons.

55. During its visits to the Kandakadu and Senapura treatment and rehabilitation centres, the Working Group was informed that the rehabilitation programme consisted of two six-month periods, the first six months being spent in Kandakadu for counselling and the second six months in Senapura for vocational training. All who enter this programme do so

pursuant to a court order. However, the Working Group observed numerous irregularities in the way court orders had been obtained. It is very common for family members to request the courts to make such orders, or for those arrested for possession of drugs to be placed under a detention order in the rehabilitation camps without any medical assessment of whether the individuals in question are in fact addicted to drugs and therefore require rehabilitation. In fact, the only medical assessment carried out in relation to those arrested takes place after the judge has made the decision to refer the individual to the rehabilitation camps and only certifies whether the person is fit, physically and mentally, to be sent to such a camp. Moreover, following the arrest and court order, it is common for those arrested to be sent to remand prisons for periods of two to three weeks before they are transferred to rehabilitation camps. During that period, and even when they have been transferred to a rehabilitation camp, addicts receive no medical treatment and must therefore go without treatment or relief for withdrawal symptoms.

56. The compulsory rehabilitation programme subjects detainees to long hours of physically strenuous exercise, there is no individualized assessment conducted to determine the most appropriate treatment programme and the overall delivery of the programme is not carried out by specifically trained medical professionals. Security in the two camps is provided by the army and the programmes are overseen by counsellors who, from a medical standpoint, have received limited training on the management of drug dependence. The Working Group is of the view that the military authorities should not be involved in administering rehabilitation programmes and any such programmes must be in the hands of professionally trained medical personnel.

57. Although the two rehabilitation centres benefit from more relaxed rules than a regular prison, they are nevertheless akin to prisons in their organizational structure: barbed wire fences surround the centre, heavily armed army personnel in military uniforms patrol the boundaries, there are fixed schedules for activities, there is no possibility to freely move in and out of the centres, there are obligatory uniforms for detainees and rules for family visits. The Working Group was also concerned about the remote location of these centres, which has negative repercussions for family visits.

58. The detainees have no legal representation, impairing their ability to contest their confinement in rehabilitation centres or to obtain release at the end of the programme. In addition, the time that the detainees spend during the second rehabilitation phase in Senapura is not precisely set. While the authorities stated that this should be six months, the Working Group came across cases in which the rehabilitation period had been considerably extended.

59. The Working Group wishes to emphasize that the absolute prohibition of arbitrary deprivation of liberty and the safeguards against it apply to everyone, including those arrested, detained or charged for drug-related offences and those undergoing compulsory rehabilitation programmes for drug addicts.

3. Rehabilitation of women and other vulnerable persons[10]

60. At the time of the visit, 175 women were deprived of their liberty at the Methsevana State House of Detention in Gangodawila, which is maintained by the Social Services Department of the Western Provincial Council and is the only State-run women's home in Sri Lanka. An estimated 90 per cent of the women detained there have a psychosocial disability and the facility is unable to provide the support they require. The women are very poor and come to Methsevana with a low level of education. They are sent to the facility for rehabilitation and to undertake various vocational training activities.

61. It is of serious concern that women and children are deprived of their liberty at Methsevana without due process and satisfactory judicial review. Most women placed at Methsevana have been found to have committed acts of vagrancy under the Vagrants Ordinance 1841 and detained pursuant to the House of Detention Ordinance 1907. The Working Group was informed that if a woman pleads guilty to acts of vagrancy, she can be

[10] See United Nations Basic Principles and Guidelines, principle 19 and guideline 19.

released upon payment of a fine of 100 rupees. However, most women who are found to have engaged in acts of vagrancy cannot afford to make such a payment and would probably be detained again when found by the police to be loitering or committing other acts that fall under the Vagrants Ordinance. Women who are unable to pay the fine or do not wish to plead guilty are placed in Methsevana by an order of a magistrates' court. According to the testimony received, most women cannot afford a lawyer and have no access to legal assistance before or during their court hearing.

62. Once placed under a court order, the women are not taken back before the court for periodic review. Most are "no date" detainees, who have not been given a release date and are effectively detained indefinitely. Some women have been deprived of their liberty at Methsevana for years, including one woman who has been held in the facility since 1975. The Working Group was informed that either the Minister or a court can order release, but that there are limited prospects for doing so, particularly for women who have no family. In fact, it appears that one of the few ways that a woman can be released is if a husband is found for her through the placement of an advertisement in the newspapers, a practice which the Working Group finds unacceptable. Women interviewed confirmed that staff at the facility do make an effort to find employment for them so that they could have a source of income, allowing them to reside in the community.

63. Women residing at Methsevana are not permitted to leave and the facility is more like a prison than a suitable environment for vocational training. Women are often brought to Methsevana in a prison van, uniformed police officers guard the facility, residential areas are secured by locks and bars, and a seclusion cell is used to temporarily house women who have been involved in violent behaviour. The personnel resources at Methsevana are not sufficient to ensure that the women are safely detained and a further 15–20 staff members are needed. The conditions do not meet international standards for places of detention, particularly the women's living areas, and the buildings are not maintained or suitable for persons who require medical care. Children residing with their mothers at Methsevana are only permitted to do so until they reach the age of 3, at which point the child is either adopted with the mother's consent or transferred by court order to a childcare home. There are no personnel specialized in psychosocial disabilities at Methsevana. The Working Group considers the removal of children from their mothers at such a young age to be contrary to the best interests of the child and calls upon the Government to introduce legislation outlawing the practice.

64. The Working Group urges the Government to take immediate action to address these issues. The Vagrants Ordinance 1841 and the House of Detention Ordinance 1907 are outdated and are overly broad in their application to individuals deemed to be "idle and disorderly", including "prostitutes".

F. Deprivation of liberty on discriminatory grounds

65. The Working Group learned of several situations in which people were being deprived of their liberty, or were at high risk of being detained, on discriminatory grounds, contrary to Sri Lanka's obligations under articles 2 and 26 of the International Covenant on Civil and Political Rights to ensure the equal protection of the law without distinction of any kind.

66. Poverty appears to be a major determinant of whether a person will be taken into custody throughout Sri Lanka and how long he or she will be deprived of liberty. Testimonies from many people in detention indicated that those who could afford quality legal representation were likely to receive a better outcome in their cases, including individuals charged under the Prevention of Terrorism Act or for criminal offences and those detained at drug rehabilitation centres and childcare institutions. The Working Group also received reports that between 25 and 30 beggars, homeless and street people are reportedly being detained at Ridiyagama Detention Centre in Ambalantota each month. The Centre, which is maintained by the Social Affairs Division of the Southern Provincial Council, also houses anybody sent by court order who is defined as a vagrant under the Vagrants Ordinance. That includes female prostitutes, elderly people and individuals who

have psychosocial impairments or alcohol addiction. The Working Group was informed that a similar detention centre is located at Weerawila.

67. The Working Group also received accounts of Tamils who had been arrested and detained in 2015, 2016 and 2017 upon returning to Sri Lanka after seeking asylum in another country or working abroad. The Working Group also received testimony that in some cases, the returnees were beaten and kept under surveillance once released, and charged with offences relating to illegal departure from Sri Lanka. Similarly, civil society organizations, journalists, lawyers, activists and human rights defenders who attempt to protect the rights of Tamils are reportedly subject to threats and harassment for their work.

68. The Working Group considers that any form of discrimination that results in the deprivation of liberty is clearly arbitrary and urges the Government to find affordable alternatives to detention for the most vulnerable members of society, including social services. The Working Group also urges the Government to investigate allegations of discrimination against Tamils in the criminal justice system, holding those responsible for human rights violations accountable for their actions.

G. Deprivation of liberty of asylum seekers, refugees, stateless persons and migrants

69. Sri Lanka is not a party to the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol, nor to the 1954 Convention relating to the Status of Stateless Persons, nor the 1961 Convention on the Reduction of Statelessness. However, arrangements are in place with the Office of the United Nations High Commissioner for Refugees (UNHCR) in the form of a memorandum of understanding to ensure that those arriving in Sri Lanka as asylum seekers are given international protection. UNHCR registers such individuals, provides them with the requisite documents until they are able to either live freely in the community or until resettlement arrangements can be made in a third country. While this is a positive step undertaken by the current Government, the ad hoc nature of the arrangement is of concern.

70. Detention in the context of migration proceedings must be an exceptional measure that is only resorted to in instances clearly identified in law, following an assessment of the necessity to detain in each individual case. Moreover, due consideration of alternatives to detention must be carried out so as to ensure that detention is resorted to only exceptionally. When detained, migrants must be held in appropriate facilities which respect their inherent dignity.[11]

71. The Working Group observed the dire conditions in the Mirihana immigration detention facility, which is overcrowded, with poor shower and bathroom facilities and no recreational activities for those held there. As a former police station, the facility is entirely inappropriate for holding people for prolonged periods. However, some individuals have been held there for significant periods of time, including one person who has been there since 2010. The Working Group appreciates the difficulties the Sri Lankan authorities face in establishing the true nationality of this individual, but recalls that immigration detention must be a measure of last resort and can never be indefinite. If the nationality of that individual cannot be established, he must be released.

V. Implementation of opinions adopted by the Working Group

72. Since its establishment, the Working Group has adopted 11 opinions involving Sri Lanka (see annex III). The Working Group invites the Government to submit updated information, including on whether the subjects of these opinions whose deprivation of liberty has been found to be arbitrary, have been released and reparations made to them, or

[11] See Working Group on Arbitrary Detention, revised deliberation No. 5 on deprivation of liberty of migrants, paras. 12, 14, 16, and 17.

whether any other action has been taken to implement the recommendations of the Working Group.

VI. Conclusions

73. **The Working Group appreciates the willingness of the Government to submit itself to scrutiny through the visit, and considers that the findings in the present report offer an opportunity to support the Government in addressing situations of arbitrary deprivation of liberty.**

74. **The Working Group was informed of many positive changes that were being made across Sri Lanka in relation to the deprivation of liberty.**

75. **The Working Group identified systemic problems within the criminal justice system which placed defendants at a high risk of arbitrary detention.**

76. **The Working Group found that while the number of arrests and detention under the Prevention of Terrorism Act appears to have fallen, the Act contains numerous severe restrictions on the right to a fair trial.**

77. **The Working Group is deeply concerned that over 14,000 girls and boys under the age of 18 are deprived of their liberty in 371 childcare institutions across Sri Lanka.**

78. **The Working Group learned that the placement of individuals in hospitals and treatment facilities on the basis of a psychosocial disability or a mental health condition, such as schizophrenia, bipolar disorder or depression, is increasingly common in post-conflict Sri Lanka.**

79. **The Working Group identified systemic problems with deprivation of liberty for rehabilitation purposes, including with regard to the rehabilitation of ex-combatants, drug users, women and other vulnerable persons.**

80. **The Working Group learned of several situations in which people were being deprived of their liberty, or were at high risk of being detained, on discriminatory grounds.**

81. **The Working Group observed the ad hoc nature of the arrangements regarding asylum seekers in Sri Lanka and the dire conditions in the Mirihana immigration detention facility.**

VII. Recommendations

82. **The Working Group recommends that the Government of Sri Lanka undertake the following measures in relation to the national human rights framework:**

(a) **Continue efforts to establish a permanent government body to coordinate engagement with international human rights mechanisms, while involving from the outset all the relevant stakeholders, including the Human Rights Commission and civil society actors;**

(b) **Enable the Office of Missing Persons to commence its operations immediately, with the full involvement and participation of victims and civil society organizations;**

(c) **Establish, without delay, a truth and reconciliation commission, a reparations programme and a special accountability mechanism, as outlined in Human Rights Council resolution 30/1, with the full involvement and participation of all relevant stakeholders;**

(d) **Embark upon implementation of the objectives set out in the national action plan for the promotion and protection of human rights for the period 2017–2021 with the full involvement of the Human Rights Commission and civil society;**

(e) Institutionalize the practice of seeking the advice of the Human Rights Commission on draft legislation, giving it an opportunity to provide comments and engage in constructive dialogue with it concerning its recommendations;

(f) Ensure that adequate additional resources, in terms of both personnel and funding, are allocated to the Human Rights Commission so as to enable it to discharge its functions as the national preventive mechanism effectively and independently;

(g) Review the legal framework applicable to the fundamental rights procedure in order to widen the scope of its application and undertake concrete steps to make this procedure further accessible throughout the country.

83. The Working Group recommends that the Government of Sri Lanka undertake the following measures in relation to criminal justice:

(a) Adopt measures to address lengthy pretrial detention, such as:

(i) Promoting the use of bail (set at realistic levels) and alternatives to detention;

(ii) Expediting investigations;

(iii) Expediting court proceedings by ensuring that there are sufficient prosecutors and judges in the country. Ensure that time spent in pretrial custody is taken into account when the final custodial sentence is determined;

(b) Ensure that decisions on whether to grant bail are individualized and that no group of suspects, such as those held under the Prevention of Terrorism Act, is submitted to a blanket exclusion from bail. Ensure that decisions on whether to grant bail are not dependent upon the consent of the Attorney General;

(c) Undertake training for the police in investigative skills, dedicate personnel and infrastructure resources to the Attorney General's Office and the courts, review case management policies and issue practice directions in the courts to put an end to repeated postponements of hearings;

(d) Fully honour the obligations of the State under the Convention against Torture, including with regard to those held under the Prevention of Terrorism Act, and ensure that all confessions obtained under duress are deemed inadmissible as evidence in court, that any confessions are made before a judge who needs to ascertain that they were made freely and without coercion, and ensure that the burden of proof rests with the Government in this regard. Ensure that past and present allegations of torture and ill-treatment are investigated and that those responsible are prosecuted and punished;

(e) Ensure that persons in detention are informed of their rights, including their right to challenge the legality of their detention, and that regular, periodic reviews are individualized and involve an assessment of whether detention is necessary, reasonable and proportionate;

(f) Ensure that the right to legal assistance is guaranteed by law from the moment of arrest and before an accused person makes a statement to the police or is subjected to interrogation;

(g) Ensure that those acquitted, including of charges under the Prevention of Terrorism Act, receive a public acknowledgement of wrongful imprisonment and adequate reparations, including compensation and/or guarantees of non-repetition;

(h) Enact legislative criteria for presidential pardons, parole and early release. Abolish the death penalty and establish a formal moratorium on all pending executions.

84. The Working Group recommends that the Government of Sri Lanka undertake the following measures in relation to the Prevention of Terrorism Act:

(a) **Conduct an urgent nationwide audit to determine the exact numbers of those held under the Prevention of Terrorism Act, how long they have been deprived of liberty, their status (remand or convicted), and their location. Ensure that those held under the Act are either tried or released;**

(b) **Ensure that the National Human Rights Commission is notified of any arrest carried out under the Prevention of Terrorism Act;**

(c) **Repeal the Prevention of Terrorism Act without delay. Further to the national action plan for the protection and promotion of human rights for the period 2017–2021, ensure that any new legislation complies with international human rights standards and best practice, and guarantees all suspects immediate access to legal assistance free of charge and provisions for applying for bail that are not subject to the veto of the Attorney General;**

(d) **Ensure that the Prevention of Terrorism Act is amended through a consultative process, including with victims' rights' groups, civil society and human rights lawyers, and that relevant experts assist in drafting the new legislation;**

(e) **Ensure that those suspected of criminal activity, including involvement in terrorism, are heard in a language they understand, or provided with appropriate translation in areas around the country.**

85. **The Working Group recommends that the Government of Sri Lanka undertake the following measures in relation to children:**

(a) **Ensure that the definition of a child under the Convention on the Rights of the Child is incorporated across Sri Lankan legislation (for example, the Criminal Code, the Criminal Procedure Code etc.) and that ministries issue information about this change to relevant locations where children are deprived of their liberty;**

(b) **Ensure a further increase of the minimum age of criminal responsibility to at least 14, in line with the Convention on the Rights of the Child;**

(c) **Enact the children (judicial protection) bill to ensure that there are two types of facilities for children: those for children in contact with the law and those for children in need of care, so that children in those two categories are not placed in the same facility;**

(d) **Ensure that new legislation defines the legal basis on which the detention of a child can be ordered (for example, a child aged between 14 and 18 on remand or convicted of a crime, with both categories to be separated, or a child under 18 with no family), that detention can only be by court order and must be reviewed periodically, and that a person can no longer remain in such facilities after the age of 18. Ensure that the detention of children is the last resort and in the best interest of the child, with community-based placement and/or care prioritized;**

(e) **Introduce a code of conduct and legislative oversight of privately run children's homes, with mandatory reporting and inspection requirements, education and counselling requirements and training requirements, and clear child protection policies for staff with regard to appropriate disciplinary methods, in line with the national child protection policy;**

(f) **Ensure that the National Child Protection Authority receives the necessary staffing and financial resources to regularly monitor all centres where children are deprived of their liberty, including those operated by non-government entities, and that reintegration plans are put in place for children after they leave those centres;**

(g) **Ensure that the courts take a proactive role in considering the necessity of detaining children and seek alternatives whenever possible. Ensure that a child protection policy and guidelines are in place for every institution at which children are deprived of their liberty, in line with the national child protection policy.**

86. **The Working Group recommends that the Government of Sri Lanka undertake the following measures in relation to disability or mental health condition:**

(a) **Enact legislation to ensure that the admission of persons to mental health facilities in criminal matters is in accordance with criminal procedure and is kept under review by a court which can order discharge in appropriate cases;**

(b) **Review and amend the Mental Disease Ordinance 1873 and the Mental Disease Act 1956 to clarify how and under what circumstances individuals are admitted to and remain in the custody of mental health facilities;**

(c) **Ensure that personal and financial resources are allocated to allow for community-based support to individuals whenever possible, including persons with intellectual disabilities, so that they can live in the community as an alternative to detention in mental health facilities.**

87. **The Working Group recommends that the Government of Sri Lanka undertake the following measures in relation to the rehabilitation of ex-combatants:**

(a) **Release the eight detainees at the Poonthottam Rehabilitation Centre immediately and unconditionally, and close the Centre as soon as possible, as it lacks a legal basis and, in the case of the current eight detainees, was the result of grave violations of the right to a fair trial;**

(b) **Ensure that those who are currently detained and have previously been detained at the centre receive public acknowledgement of wrongful imprisonment and compensation and/or guarantees of non-repetition, including the immediate cessation of harassment and surveillance by the authorities of the detainees and their families.**

88. **The Working Group recommends that the Government of Sri Lanka undertake the following measures in relation to rehabilitation programmes for drug users:**

(a) **Ensure that the consumption of drugs is decriminalized in Sri Lanka, in order to avoid arbitrary detention;**

(b) **Eradicate, in law and in practice, the involuntary confinement of those who use or are suspected of using or possessing drugs for personal consumption;**

(c) **Ensure that the prohibition of arbitrary arrest and the right to a fair trial are protected in accordance with international norms, including in respect of persons who are arrested, detained or charged for drug-related offences other than for use or possession for consumption.**

89. **The Working Group recommends that the Government of Sri Lanka undertake the following measures in relation to the rehabilitation of women:**

(a) **Urgently repeal the Vagrants Ordinance 1841 and the House of Detention Ordinance 1907. Acts of vagrancy are strongly associated with poverty, which is a social problem best addressed through the provision of community support services that allow impoverished women to live in dignity and self-sufficiency;**

(b) **Enact legislation and allocate sufficient funds to ensure that the Methsevana State House of Detention can serve as an open house, providing care and formal education and/or vocational training to women who have no family support structure, rather than as a place of detention, and preferably in more modern premises;**

(c) **Introduce legislation to outlaw the removal of young children from their mothers at Methsevena State House of Detention, as being contrary to the best interests of the child;**

(d) **Ensure that the 2014 cabinet decision which seeks to ensure that individuals with psychosocial disabilities can be provided with support at the National Institute of Mental Health is implemented, while encouraging the prioritization of community-based support wherever possible. Ensure that sufficient resources are put in place at Angoda to give effect to that decision.**

90. **The Working Group recommends that the Government of Sri Lanka undertake the following measures in relation to discrimination:**

(a) **Put an end to the detention of homeless and street people and those defined as vagrants under the Vagrants Ordinance (such as female prostitutes, elderly people and individuals with psychosocial impairments or alcohol addiction) at the detention centres in Ambalantota and Weerawila;**

(b) **Investigate allegations concerning Tamils who have been arrested and detained when returning to Sri Lanka after seeking asylum in another country or working abroad and punish those responsible for any torture or ill-treatment. If such individuals are still in detention, immediately and unconditionally release them, and ensure that they receive public acknowledgement of wrongful imprisonment and compensation and/or guarantees of non-repetition. Cease intimidation, harassment and threats to civil society organizations, journalists, lawyers, activists and human rights defenders who attempt to protect the rights of Tamils;**

(c) **Find affordable alternatives to detention for the most vulnerable members of society, including social services to alleviate poverty.**

91. **The Working Group recommends that the Government of Sri Lanka undertake the following measures in relation to asylum seekers, refugees, stateless persons and migrants:**

(a) **Ratify the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and develop a national legal framework in relation to asylum seekers and refugees that reflects international standards;**

(b) **Enact legislation that would specify that any detention in the course of migration proceedings must be exceptional, ordered by a judicial authority only in cases when specifically prescribed by law and assessed as necessary and proportionate in individual cases;**

(c) **Ensure that a dedicated process is put in place which allows for the identification of stateless persons;**

(d) **Ensure that alternatives to detention in the context of migration, which are accessible and realistic, are deployed;**

(e) **Cease holding migrants in Mirihana immigration detention facility immediately as it is entirely inappropriate for such purposes.**

Annex I

Meetings with authorities

During the visit, the Working Group met with the Minister of Justice, the Minister of Prison Reforms, Rehabilitation, Resettlement and Hindu Affairs, the Commissioner General of Prisons and the Commissioner General for Rehabilitation, the Minister of Law and Order and Southern Development, the Inspector General of Police, the Criminal Investigation Department, the Terrorist Investigation Division, the Special Task Force and the Organised Crime Division, the Minister of Women and Child Affairs, the Minister of Health, Nutrition and Indigenous Medicine, the Deputy Minister of National Policy and Economic Affairs, the Secretary to the Ministry of Foreign Affairs, the Secretary to the Ministry of Defence, the Chief of Defence Staff, the Commanders of the Army, Navy and Air Force and the Chief of the State Intelligence Service the Controller General of Immigration and Emigration, the Chief Justice, the Attorney General, representatives of the Bar Association, the Human Rights Commission, the Legal Aid Commission, the National Police Commission, as well as various authorities in Anuradhapura, Vavuniya, Trincomalee, and Polonnaruwa.

Annex II

Detention facilities visited

The Working Group visited over 30 places of deprivation of liberty. including police stations; remand, long-term and open prisons; immigration detention facilities and entry ports; army and navy camps; homes for children, women and the elderly; institutions for persons with psychosocial disabilities; rehabilitation centres for ex-combatants and centres for treatment of drug dependency.

Colombo

Welikada Prison

Welikada Prison Women's Ward

New Magazine Remand Prison

Police Criminal Investigations Department

Terrorist Investigation Division

Kollipitiya Police Station

Slave Island Police Station

Panagoda Army Base – Security Forces Headquarters (West)

Mulleriyawa Mental Hospital – National Institute of Mental Health (Angoda)

Mirihana Migration Centre

Methsevana State House

The Balika Home (Girls Home)

The Senior Citizen's Home

The infants home

Ghampa / Negombo

Negombo Remand Prison

Criminal Investigation Department holding facilities at international airport

Terrorist Investigation Division holding facilities at internationall airport

Narcotics holding facilities at international airport

Negombo removal facilities at international airport

Remand Home for Juveniles (Ranmuthugala)

Certified School for Juveniles (Ranmuthugala)

Anuradhapura

Anuradhapura prison and remand prison

Anuradhapura work camp and open prison camp

Anuradhapura police station

Nochchiyagama Police station

Yehali Counselling Center

Vavuniya

Poonthottam Rehabilitation Centre

Vavuniya Army Head Quarters (former Josef Camp)

Trincomalee

Trincomalee Naval Base

Trincomalee Harbour Police

St Joseph Home for Elders

Polonnaruwa

Kandakadu Treatment and Rehabilitation Centre

Senapura Rehabilitation Camp

Kurunegala

Meath Nivasa Old Peoples' home

Annex III

Opinions adopted concerning Sri Lanka

Opinion No. 48/2013: Varnakulasingham Arulanandam

Opinion No. 9/2013: Santhathevan Ganesharatnam

Opinion No. 50/2012: Uthayakumar Palani

Opinion No. 38/2012: Gunasundaram Jayasundaram

Opinion No. 26/2012: Pathmanathan Balasingam and Vijiyanthan Seevaratnam

Opinion No. 49/2011: Jegasothy Thamotharampillai and Sutharsini Thamotharampillai

Opinion No. 30/2008: Gunasundaram Jayasundaram

Opinion No. 8/2005: Maxilan Anthonypillai Robert et al

Opinion No. 24/2001: Edward Anton Amaradas et al

Opinion No. 21/2001: Chinniah Atputharajah et al

Opinion No. 1/1996: S. Sellathurai et al